

# **The Scottish Journal of Criminal Justice Studies**

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## **EDITORIAL BOARD**

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## **Editorial**

Welcome to the twenty first volume of the **Scottish Journal of Criminal Justice Studies**. In addition to the Chairman's Report for the year, this year's Journal contains three original articles on topical criminal justice matters, and the 2015 prize-winning SASO Student Essay. The first article, by Colin Atkinson, addresses Scotland's intelligence and security arrangements through a particular focus on intelligence relationships. Specifically, the article discusses the ways in which the 2014 independence referendum exposed contrasting perspectives on the nature of a prospective intelligence relationship between Scotland and other countries, including the remainder of the United Kingdom.

The article by Margaret Malloch is a timely and sobering piece which reviews both historical efforts and recent developments in Scotland that have been aimed at addressing the rate of women's imprisonment and the problems of custody for women. Whilst recognising the marked improvements that have been made, particularly in recent years, she shows that despite many changes in practice, the major problems facing women in the criminal justice system have changed very little since the 1980s. The article highlights the importance of grasping the opportunities presented by the current momentum.

The article by Kath Murray provides a lively, detailed and insightful discussion of the use of stop and search powers for alcohol for under-18s. In particular, the paper focuses on the relationship between underage drinking, deprivation and policing, with a view to assessing how a potential search power for alcohol might impact on young people.

Also included in this volume is the prize-winning student essay by Zoe Russell, of the University of Stirling. Her essay is titled 'How might an understanding of 'community' and 'place' help us prevent crime?'

The **Journal** is very keen to publish articles on matters of interest to the Scottish criminal justice community. I would particularly like to encourage articles from criminal justice practitioners, and those with practice experience, which inform the realities of work in criminal justice. Contributors are asked to send articles (in Word format) to the Editor ([michele.burman@glasgow.ac.uk](mailto:michele.burman@glasgow.ac.uk)). All articles will be reviewed by two members of the **Editorial Board**.

**Michele Burman**

**‘The Scottish MI5 station will change to MI6. And you know what MI6 does!’**

**Understanding the hidden politics of intelligence in Scotland’s independence referendum debate**

by Dr Colin Atkinson, Scottish Centre for Crime and Justice Research, University of Glasgow

**Abstract**

The 2014 referendum on Scottish independence disclosed contrasting perspectives on the nature of a prospective intelligence relationship between an independent Scotland and other nations, particularly the remainder of the United Kingdom (UK). The Scottish Government maintained that intelligence sharing would be in the best interests of both Scotland and the UK. The UK Government, however, raised concerns about the nature and extent of an independent Scotland’s intelligence relationships with both the UK and other international partners. Based on documentary analysis and first-hand qualitative fieldwork undertaken in 2014 this article argues that to fully understand the implications of Scottish independence upon prospective intelligence liaison it is necessary to differentiate between intelligence sharing and intelligence cooperation. Although limited by the ‘control principle’ and national interests an independent Scotland would almost certainly receive intelligence from the UK on an ad hoc basis; particularly if there was an imminent threat. Establishing routine intelligence sharing, and deeper forms of cooperation, would depend upon the specialist contribution or capability Scotland could make to its prospective partners. Whilst some such scope exists in relation to the UK, an independent Scotland would most likely encounter greater challenges in establishing cooperation with, or membership of, the ‘Five Eyes’ alliance.

**Introduction**

The 2014 referendum on Scottish independence disclosed contrasting perspectives on the nature of a prospective intelligence relationship between an independent Scotland and other states, particularly the rest of the United Kingdom (UK). The issue of security in an independent Scotland was first brought into public focus in January 2013 through the work of the House of Commons Foreign Affairs Select Committee as it considered the foreign policy implications of, and for, an independent Scotland. The (then) Deputy First Minister of Scotland Nicola Sturgeon MSP (now Scotland’s First Minister) appeared as a witness to the committee, to be examined by members from the three largest UK political parties at the time.<sup>1</sup> In a series of highly political exchanges Nicola Sturgeon identified ‘international terrorism’ as a strategic threat to an independent Scotland, and continued,

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<sup>1</sup> In terms of the number of parliamentary seats held in the UK House of Commons.

“In terms of security and intelligence, I would envisage Scotland having independent domestic intelligence machinery in Scotland sitting alongside our police service but working very closely – given our sharing of an island with the rest of the UK – with the UK and making sure we are sharing intelligence and sharing our response to some of these threats.” (UK Parliament 2013: 23).

Reacting to an intensive interrogation by her political peers, particularly in relation to the costs of creating this ‘machinery’ and the practicalities of sharing intelligence and cooperating with counterpart agencies in the rest of the UK, Sturgeon stated that the Scottish Government was preparing a substantial piece of work on these matters that would answer any outstanding questions in detail (UK Parliament 2013: 24). This work was published on 26 November 2013 as part of the Scottish Government’s White Paper on independence (Scottish Government 2013). However, even before the publication of this White Paper the issue of the potential impact of Scottish independence on security in Scotland, in the UK and further afield was beginning to gain media coverage and attract academic interest.<sup>2</sup> The White Paper on Scottish independence outlined the Scottish Government’s vision of threats to security in an independent Scotland and, crucially, how this newly-independent country would respond. It claimed that:

- There are a range of threats and risks to an independent Scotland including terrorism, cyber security threats and national emergencies. A single security and intelligence agency will be established upon independence with a requirement to work with partners to ensure Scotland’s national security. The functions of this service will include:
  - Investigation of threats
  - Domestic and international liaison
  - Intelligence gathering, receipt and handling
  - Production of open source intelligence material
  - Assessment and analysis
  - Production of risk and threat assessments
  - Protection of Scotland’s critical infrastructure
  - Cyber security functions
- Intelligence sharing will be in the best interests of the people of Scotland and of the rest of the UK
- This new security and intelligence agency will have the appropriate security arrangements necessary to give assurance to international partners that it can receive and handle intelligence safely and securely (Scottish Government 2013: 261-265).

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<sup>2</sup> For an example of the media interest see The Sunday Times (2013). Academic interest was particularly coalescing around an Economic and Social Research Council-funded series of seminars on the topic of ‘Security in Scotland, with or without constitutional change’ (see Economic and Social Research Council 2013).

Such perspectives were not unproblematic, and counter-perspectives emerged to offer alternative accounts of the challenges that an independent Scotland may face. The UK Home Secretary, Theresa May, repeatedly raised concerns about the ‘assumptions’ made by the Scottish Government in relation to the future intelligence relationship between the two states, and of how the current ‘seamless, automatic and natural’ collaboration would be disrupted, with a resultant reduction in Scotland’s security capabilities (The Scotsman 2013; The Guardian 2013a). Similarly, the UK Government’s own paper on the security implications of Scottish independence highlighted that an independent Scotland would no longer have ‘automatic access’ to the range of resources and technical capabilities of the UK intelligence services. It further contended that where the UK held intelligence from third-parties, the dissemination of this intelligence from the UK to Scotland would be limited by the ‘control principle’ (also known as the ‘third party rule’). This principle, which is pervasive in the intelligence world, dictates that intelligence supplied by one party to another cannot be shared with an additional third-party without the originator’s consent (Lefebvre 2003: 532).<sup>3</sup> This is significant given the extent to which the UK intelligence works with an array of international partners, old and new (HM Government 2010). The UK Government’s paper on the security implications of Scottish independence also argued that Scotland’s international intelligence relationships would hinge upon its ability to provide a specialist contribution to any prospective partners (HM Government 2013). In delivering two such competing perspectives the debate on Scottish independence offered a unique setting in which to explore the hidden politics of intelligence relationships between states.

Drawing upon both documentary analysis and first-hand qualitative fieldwork undertaken in Scotland in 2014 this paper explores the implications of Scottish independence upon arguably two of the most important intelligence relationships for this new state: liaison with both the UK and the Five Eyes alliance, the latter of which incorporates the UK, the United States (US), Canada, Australia and New Zealand.<sup>4</sup> In

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<sup>3</sup> Discussing the difficulties of this principle Robert David Steele (2007: 113) reduced the rationale to a clear and parsimonious statement: the default condition of the secret intelligence world is “do not share”.

<sup>4</sup> An independent Scotland’s intelligence relationships with its European partners would also be important, but remain deliberately outside this scope of this paper. Supporters of Scottish independence claimed that Scotland would become a European Union (EU) member state following independence, whilst others questioned the possibility or practicalities of such an outcome. In some respects an independent Scotland’s membership of the EU is of less importance in the context of the role of intelligence in national security. Whilst the EU is developing an emerging role as a security and intelligence actor from the perspective of counter-terrorism (Den Boer 2015) – particularly through the development of European Police Office, or Europol (Deflem 2006) and a ‘surprising’ array of accomplishments in the post-9/11 context (Argomaniz et al 2015) – the EU’s counter-terrorism role has remained subsidiary, both legally and politically, to that of its member states (Monar 2015). Even where European intelligence liaison has gained some institutional traction, especially within European law enforcement circles, it has been argued that counter-terrorism networks and privileged partnerships tend to be preferred to formal bureaucratic structures because of their flexibility and directness; and that this professional preference for informal, bilateral and privileged relationships may undermine the potential of formally established agencies such as Europol, which work through national and centrally co-ordinated channels of information and intelligence (Den Boer et al 2008). Others have summarised

doing so this paper contends that to fully understand the implications of Scottish independence upon the new state's intelligence relationships it is necessary to unpack both intelligence sharing and intelligence cooperation from within Jeffrey T. Richelson's 'calculus of cooperation'. Richelson's calculus has become an important reference point in a subject area – oftentimes referred to as intelligence liaison – that has received a relative lack of attention in the academic study of intelligence and has been mostly neglected in wider public commentary (Munton and Fredj 2013; Lander 2009). This article begins with a re-appraisal of Richelson's calculus that explicitly distinguishes between 'intelligence sharing' and 'intelligence cooperation'. It then progresses to apply this revised calculus to the politics of intelligence liaison in the unique setting of a prospectively independent Scotland. By clearly distinguishing between 'sharing' and 'cooperation' in intelligence liaison this paper suggests that whilst an independent Scotland would almost certainly receive intelligence from its most powerful and capable neighbour, the UK, on an ad hoc basis – especially where there was an imminent threat – the development of routine intelligence sharing and deeper forms of intelligence cooperation would depend upon any specialist contribution or capability that Scotland could provide to countering threats to the UK. For similar reasons there is also a deeper uncertainty over an independent Scotland's participation in the Five Eyes arrangements, and thus the extent to which Scotland would receive intelligence from – and benefit from the security umbrella of – this network.

### **Revisiting Richelson's calculus**

Intelligence is both highly secretive and at the very heart of modern statecraft. In a 1990 journal article Jeffrey T. Richelson sought to explain the reasons as to why governments exchange intelligence with foreign actors and why they would permit foreign agencies to operate on their sovereign soil. In some respects, and especially in the post-11 September 2001 (9/11) context, such forms of intelligence liaison can be understood as a pragmatic response to the trans-national nature of the threats that dominate the security landscape. Following 9/11 Sir Stephen Lander, the former Director General of the UK Security Service, remarked upon the shift from the state-based threats previously faced in the Cold War to the recent, and spectacular, emergence of international terrorist networks,

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this situation as follows: whilst some intelligence co-operation takes place within the EU, the bulk does not (Müller-Wille 2008). This has been explained, at least in part, by the EU's limited powers and a lack of trust from national agencies (Bures 2008). The 'fundamental question' posed by Doron Zimmermann in 2006 – of whether the EU itself, as opposed to its constituent members, or an alternative multilateral forum, is an appropriate body for effectively confronting terrorism in Europe – is answered, at least for now, by the pre-eminence of member states' own arrangements in relation to such matters and the fact that agencies such as Europol are essentially constrained by their intergovernmental nature. An independent Scotland would almost certainly look 'closer to home' first, before it branched out to share intelligence and cooperate with any prospective European partners.



“Threats from non-state actors are difficult to address because they are informal, mobile, variably organised and unpredictable (i.e. all the things that states usually are not). Intelligence agencies in the West, however large and competent, will only ever be able to collect successfully against a part of the target.” (Lander 2004: 492).

Increasingly, therefore, there are functional pressures for states to share intelligence and cooperate with one another in order to counter new security threats (see Rathmell 2002; Lefebvre 2003: 527; Bamford 2004: 745; Matei 2009: 574-575; Byman 2014: 849-853). For Anne-Marie Slaughter the implications of this type of ‘new world order’ are clear: networked threats require a networked response (Slaughter 2004: 2).<sup>5</sup>

This post-9/11 security context fits well with the positive side of Richelson’s calculus: that the primary benefit for the recipient state in any liaison arrangement is that it would acquire useful intelligence that it is unable, for a variety of reasons, to obtain otherwise (Richelson 1990: 311). Such intelligence sharing could certainly assist in providing the recipient state with a fuller picture of a particular threat that it may face. Richelson is less clear, however, on the reasons as to why a state would willingly disseminate its intelligence – obtained through an investment in, and exploitation of, significant, valuable and sensitive resources – to another state under such circumstances.<sup>6</sup> Chris Clough (2004) suggests that the most reasonable explanation of the willingness of states to share intelligence is the recognition of a *quid pro quo*; that is to say that the disseminating state would, at some stage in the future, expect a return of other useful intelligence from the recipient. This demonstrates how intelligence sharing is not an altruistic phenomenon, but is instead undertaken on the basis of ultimately advancing a state’s own national interests. Additionally, Richelson also sought to explain the negative part of his calculus: why governments would *not* participate in such intelligence liaison arrangements. He suggests that the reasons for such non-participation may include: the compromise of sources, methods and the intelligence produced; unauthorised disclosure; a demand for even greater sharing; the participation in international intelligence arrangements causing a nation to conduct intelligence operations of little or no direct use to its own security; an intelligence cooperation agreement requiring a nation to forego certain intelligence collection activities that otherwise would be in its national interest; and, lastly, that nations may risk serious embarrassment when details of intelligence liaison become public (Richelson 1990: 315-318). Ultimately, Richelson coined the term ‘the calculus of cooperation’ to describe this assessment of costs and benefits. This paper argues that the nomenclature of Richelson’s calculus is misleading, and a more detailed and

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<sup>5</sup> Accepting the fact that whilst cooperation is a feature that is common in contemporary intelligence – overlaying the perception of a secretive and exclusively ‘national’ entity – exchanges of some kind have a much deeper history than the forms of cooperation of the twentieth century (Herman 1996: 200).

<sup>6</sup> Richelson hints at the possibility that the sharing of such intelligence may be undertaken to influence the behaviour of the recipient state in ways that favour the originator (Richelson 1990: 311). His discussion of this, however, lacks clarity and is under-developed.

sensitive taxonomy of the rationale for (and restraints upon) intelligence liaison is required to understand the hidden politics of intelligence in Scotland's independence referendum debate.

Richelson explicitly remarked that he sought to explore the different types of international intelligence cooperation that characterise intelligence liaison, and how these factor into his calculus. Yet despite his ambition Richelson was ambiguous on the differences between 'intelligence sharing' and 'intelligence cooperation', which are similar but distinct processes. James Walsh (2010: 6) has defined intelligence sharing as the straightforward process whereby one state – the sender – gives intelligence in its possession to another state, the recipient. Intelligence sharing can thus, at least in theory, operate unidirectionally.<sup>7</sup> Intelligence cooperation, however – reflecting Jennifer Sims' distinction between simple and complex liaison (Sims 2006: 196-197) – must be understood as a set of deeper, more embedded, more formal, enduring and potentially institutionalised reciprocal processes, that function beyond the simple sharing of intelligence. In contrast to intelligence sharing, intelligence cooperation may involve the pooling, joint working or inter-operability of technical or human resources for the purposes of achieving common objectives. Both the deep levels of integration and the division of effort in common tasks – and the resultant levels of specialisation – that are indicative of intelligence cooperation are not new to intelligence work; for example they formed a key feature of US-UK partnership in the Second World War and developed to become a permanent feature of this relationship (Herman 1996: 202). Both intelligence sharing and intelligence cooperation can only occur where there is an appropriate infrastructure to protect intelligence and the necessary levels of trust between all partners; incorporating both formal structures and informal cultures. For example, in the context of discussing intelligence sharing in the EU James I. Walsh has remarked upon how establishing trust is critical to facilitating fully effective intelligence sharing, and that 'institutions are not enough' (Walsh 2006). In addition to mutual trust in the processes and procedures for the protection of intelligence assets, deeper forms of intelligence cooperation are undertaken on the basis of shared values or common foreign policy objectives, and are more likely to occur where both of these are present.

### **Scotland's current intelligence and security arrangements**

The nuanced distinction between intelligence sharing and intelligence cooperation is vital in understanding the hidden politics of intelligence in Scotland's independence referendum debate. Developing such an understanding, however, also requires an appreciation of Scotland's security arrangements within the current UK political settlement. The Scotland Act 1998 granted devolution to Scotland with the establishment of the Scottish Parliament, which was given the power to legislate in all

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<sup>7</sup> However, given the probable rationale of a *quid pro quo*, it is likely to take the form of an informal reciprocal arrangement over time.

areas except those reserved by Westminster. Devolution does not extend legislative competence to the Scottish Parliament on matters of national security or the provisions for dealing with terrorism (Keating 2002: 16), which are instead reserved matters. The Scotland Act 1998 did, however, devolve powers to the Scottish Government in relation to policing and criminal justice (Page et al 1999: 75), which have traditionally played an important role in the provision of security in many countries, and particularly in matters of counter-terrorism (see Schiller 1989: 536). This has resulted in a certain tension in Scotland's intelligence and security arrangements. Currently, Scotland's counter-terrorism policing capability is primarily located in the Specialist Crime Division (SCD) of Police Scotland.<sup>8</sup> As a non-territorial police division the responsibilities of the SCD are to support local policing and keep people safe through the provision of access to national specialist investigative and intelligence functions; national co-ordination and local delivery of specialist policing; and the provision of a flexible and highly responsive policing service on a local, national and international scale (Police Scotland 2013). The Organised Crime and Counter Terrorism Unit (OCCTU) is the body within the SCD that is responsible for the delivery of counter-terrorism capabilities, in particular through its units responsible for intelligence, surveillance and investigations.

The Police Scotland OCCTU is integrated into a wider counter-terrorism network in the UK. The spine of this network is comprised of the intelligence services and regional counter terrorism units; the latter of which have developed relatively recently to increase regional coordination between police force Special Branches and to improve intelligence relationships between regions and the Security Service (Home Office 2003). John Bahadur Lamb (2013: 63) has argued that the most striking of developments in counter-terrorism in the UK post-9/11 landscape was the publication of an explicit, publicly accessible counter-terrorism strategy; however, the development of a truly UK-wide counter-terrorism network has also been a significant change in counter-terrorism and security practice. Initially this counter-terrorism network took the form of the establishment of a Regional Intelligence Cell (RIC) in each of the regions of the existing UK police structure, including one in Scotland. As the RIC framework for policing matured some of these regional hubs became fully-fledged Counter Terrorism Units (CTUs) with an operational remit, whilst others deepened their coordination role alongside police force Special Branches to become non-operational Counter Terrorism Intelligence Units (CTIUs). In Scotland the RIC shifted to become a CTIU, thus maintaining the presence of the eight Special Branches in each of the (then) Scottish police forces. The benefits of the RIC/CTIU in Scotland – particularly through the improvements in regional coordination and

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<sup>8</sup> Following the recent process of police reform in Scotland – involving the merger of eight territorial police forces and all related police agencies into a single service in 2013 – the SCD was created through amalgamating existing resources of the eight pre-existing Scottish police forces, including the Special Branches. Personnel, resources, assets and capabilities previously located in the Counter Terrorism Intelligence Unit (Scotland) and the Scottish Crime and Drug Enforcement Agency – both of which had national remits covering the whole of Scotland – were also incorporated into the SCD.

national coordination with the wider UK – were recognised and frequently referenced by practitioners during fieldwork. The creation of the CTIU, and its subsequent subsumption into the Police Scotland OCCTU following the creation of a single police force for Scotland, undoubtedly signalled a significant transformation in both the counter-terrorism security structure in Scotland and the nature of its linkage with policing across the UK. The creation and development of this regional police framework also had important implications for the relationship between the police service and UK intelligence agencies, especially the Security Service.

The importance of the partnership between the Security Service and its policing counterparts has been recognised at the highest levels of UK intelligence. In 2007, her final year as Director General of the Security Service, Eliza Manningham-Buller placed this valuable relationship in the context of an emerging process of the regionalisation of the Security Service that ran parallel to the aforementioned development of regional policing units. She stated,

“The Security Service aims for example, to continue to expand its presence alongside police Counter Terrorism Units and Regional Intelligence Cells, to ensure the closest possible collaboration with the Police Service at the regional level.” (Manningham-Buller 2007: 44-45).

These emerging processes of Security Service regionalisation attracted academic attention at the time. Frank Gregory, for example, noted that following the introduction of RICs the Security Service had been developing ‘regional offices’ to ensure closer cooperation between itself and the police (Gregory 2007: 186-187). Chris Northcott (2007: 470-471) also highlighted that these regional Security Service offices – one of which would be situated in Glasgow – would be used to recruit agents with local knowledge and to coordinate with local police. Beyond this academic work the development of Security Service regionalisation can also be tracked in the work of UK Government’s Intelligence and Security Committee (ISC), which first reported on this matter in 2005 (Intelligence and Security Committee 2005: 12). The ISC further reported on regionalisation in 2006 (Intelligence and Security Committee 2006: 13), and in 2007 it particularly noted that the Security Service presence in Scotland ‘grew’ in Scotland in 2006/07 (Intelligence and Security Committee 2007: 10). The following ISC report, published in early 2009, reflected upon the benefits and continued development of Security Service regional stations, citing both the advantage of closer partnership with the police and the benefit of responding to events across the UK more quickly than before (Intelligence and Security Committee 2009: 16-17).<sup>9</sup> Although subsequent ISC reports contained less discussion of

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<sup>9</sup> It should also be noted that similar processes of regionalisation are apparent in other countries, most notably the Netherlands, where the relationship between the General Intelligence and Security Service and the police Regional Intelligence Units has been characterised as ‘close and special’ (Algemene Inlichtingen en Veiligheidsdienst 2014).

regionalisation, the 2013 update did provide a case study of the impact of this now well-developed regional network. It stated,

“In September 2012, the Security Service told the Committee that “the regional counter-terrorist network and our close cooperation with the police are critical to our ability to counter terrorist threats, with the relationship between the police and the Security Service continuing to deepen and broaden”.” (Intelligence and Security Committee 2013: 12-13).

Although successive ISC reports highlighted processes of Security Service regionalisation, there has been little public discussion of how the development of this regionalised model for the delivery of security in Scotland and the UK.<sup>10</sup> Indeed, any details of the Security Service capability in Scotland remain classified due to the operational nature of this presence.

During fieldwork participants reflected upon the value of the partnership between the Security Service and the police service in Scotland following these parallel processes of regionalisation. Several practitioners interviewed for this study spoke of how the creation of the regional Security Service office in Scotland had been a ‘positive’ development; deepening the partnership between the police and the Security Service and increasing Scotland’s integration into the wider UK security community. As fieldwork progressed a significant theme emerged in the reflections of practitioners: that the referendum debate and the possibility of independence had resulted in a significant degree of uncertainty in relation to the future form, nature and quality of any relationship between security actors in Scotland and the UK Security Service. In particular there was concern around the withdrawal of the Security Service from Scotland, and the potential impact this would have on resources, capability and intelligence coverage in Scotland. There emerged an apparent apprehension from security practitioners in Scotland that the processes that would follow a pro-independence referendum outcome would impact greatly upon the extent to which the Security Service would participate in intelligence sharing or cooperation arrangements with any counterparts in Scotland. Reflecting the degree of humour in the existing cultures of both the Security Service (Andrew 2009: 847) and policing (Loftus 2009: 14) one research participant noted that ‘the standing joke was that when independence happens the Scottish MI5 station will change to MI6. And you know what MI6 does!’. In fact, some participants in fieldwork suggested that the uncertainty caused by the referendum debate itself had already disrupted the quality of the relationship between the police and the Security Service. Significantly, therefore, fieldwork disclosed a serious undercurrent of anxiety in relation to what independence would mean for the ‘positive’ relationship between the police and the

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<sup>10</sup> During the early stages of this process, in 2005, there was some very limited media coverage suggesting that the Security Service was planning its first ever permanent regional base in Scotland – to be located in Glasgow – as part of a ‘major expansion’ of the service, and which intended to enhance its nationwide counter-terrorism capability (The Scotsman 2005).

Security Service under the current regionalised model; the benefits of which remained highly valued by practitioners in Scotland and the wider UK.

### **Intelligence liaison between an independent Scotland and the UK**

Despite the divisive political rhetoric that characterised discussions of intelligence liaison during the referendum debate there was a realistic assessment from participants during fieldwork that if lives were at risk then that intelligence would be shared by the UK, where possible. One practitioner, for example, could not see ‘any way’ that the UK would not share intelligence that indicates a specific threat-to-life to Scottish citizens. Another recognised where there is a need to know, channels for intelligence sharing would be established, particularly given that an independent Scotland would not be ‘opening the door for the first time’. This reflected a wider appreciation from participants in fieldwork that a security and intelligence agency for an independent Scottish would not be ‘starting from zero with no knowledge’ and nor would it be ‘starting from scratch’. Indeed, a security and intelligence agency for an independent Scotland would benefit from levels of prior socialisation and integration, mutual understanding and trust with its UK counterparts that will have developed from a shared history and common experiences. Such processes would be strengthened by the likelihood that a Scottish security and intelligence agency would seek to employ intelligence officers, other personnel and technical capacity from the existing UK agencies.<sup>11</sup> Nevertheless, whilst it is likely that intelligence strongly indicating a threat-to-life would be shared where possible, this form of ad hoc intelligence sharing is markedly different from the relatively seamless nature of the intelligence relationship between Scottish and UK security agencies in the post-devolution security framework; one that is characterised by both the sharing of intelligence, deep forms of cooperation and high levels of integration of people and structures. The extent to which such intelligence liaison could be replicated under the conditions of Scottish independence requires a return to Richelson’s calculus.

The rationale for intelligence liaison in Richelson’s calculus on the part of the recipient state is relatively clear: to obtain intelligence to which it would not otherwise have access. In contrast, the rationale for intelligence sharing or cooperation on the part of the contributing state may seem less clear, especially given the risks previously highlighted. However, as Herman notes, the bottom line of any liaison agreement in intelligence matters is national self-interest (Herman 1996: 209). Intelligence sharing or cooperation in such contexts is therefore more likely to occur where national interests coincide or – as one researcher participant framed the issue –

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<sup>11</sup> The Scottish Government’s own White Paper on independence is clear that in creating a new security and intelligence agency an independent Scotland would initially ‘draw on expertise (such as training and IT) from other countries, primarily, given our long joint history, from the rest of the UK’ (Scottish Government 2013: 262).

where the security of the states in question are ‘interdependent and inter-constitutive’. Nevertheless, the underlying force within Richelson’s calculus for intelligence liaison is power. The debate on Scotland’s independence disclosed a key assumption on matters of security: that independence would leave Scotland in a subordinate position; dependent upon its larger neighbour to fill an ‘intelligence deficit’ that would occur following Scottish independence because this new state would no longer have automatic access to the capabilities and coverage of the UK intelligence agencies. One participant summarised that this disparity in power would leave Scotland in a weak position, reliant on the UK to ‘pass a few notes’. This was considered ‘not a strong position to be in’. Jennifer Sims has characterised such relationships as asymmetric, or form of institutionalised dependency that, because it can be held hostage by the less dependent service, constitutes a potential vulnerability for a state (Sims 2006:198). Intelligence sharing, and deeper forms of intelligence cooperation, would be much more likely in the event that Scotland could fulfil Clough’s quid pro quo by providing other useful intelligence to the UK, thus equalising any potential asymmetry. As one practitioner reflected, even if it is in the UK’s national interest to have an intelligence sharing arrangement with an independent Scotland, ‘what can Scotland offer in return?’

Fieldwork disclosed differing perspectives upon the potential specialist contribution an independent Scotland could make to the security of the UK. One practitioner was sceptical as to whether Scotland could ‘offer a particular expertise or technical capability’ that the UK could not obtain on its own. Others suggested that the UK would be interested to obtain intelligence from Scotland on terrorism matters related to Northern Ireland because, even under the conditions of independence, it would be likely that Scotland would remain a host for individuals linked to this particular set of security issues, which remain of significant interest to the UK. Fieldwork uncovered an appreciation of how Scottish security actors – particularly the police service – held a degree of expertise on Northern Ireland related terrorism. The effects of social, cultural and geographical proximity meant that Scotland became deeply involved in Northern Ireland’s sectarian conflict; an involvement that required a security response. Even here, however, the scope and extent of Scotland’s potential specialist contribution was viewed by some as quite limited in comparison to the existing intelligence capabilities and coverage of the UK intelligence agencies. Some participants viewed Scotland’s contribution here as slender or parochial, with only limited scope for understanding the security picture in Northern Ireland itself and no technical capability that could not be replicated (or bettered) by the existing UK agencies. The limitations of Scotland’s unique intelligence contribution to the UK in the Northern Ireland-related terrorism space may not offer the type of specialist contribution that would facilitate intelligence sharing or deeper intelligence cooperation with the UK. Under these circumstances an independent Scotland would most likely only benefit from the ad hoc sharing, where possible, of intelligence

indicating a threat-to-life or other intelligence that may only be shared on the basis of furthering the UK's own national interest.

There is, however, the possibility that an independent Scotland may be in a position to provide a specialist contribution to the UK in relation to the movement of people – including persons linked to both Northern Ireland-related terrorism and other forms of terrorism, extremism and espionage – and goods through Scotland's ports. The value of this specialist contribution would undoubtedly be impacted by the nature of any future border between the two nations.<sup>12</sup> Nevertheless, given the international nature of the threat faced by the UK – and, crucially, an independent Scotland – the sharing of intelligence on persons of security interest would be beneficial to both parties.<sup>13</sup> Several research participants reflected upon how a secure Scotland – with appropriately protected borders – was in the interest of the UK. One participant suggested that UK would seek to ensure that Scotland was not seen as 'an easy way to get in' to the UK. Under current arrangements the UK benefits from intelligence collected by the Police Scotland Border Policing Command – part of the OCCTU – which is located at all major Scottish international air, ferry and sea ports, and maintains responsibility for protecting Scotland's 763 small ports and landing sites. Intelligence is collected by the OCCTU on the movement of people and goods through these ports. Crucially, and controversially, these ports also form a critical site for the initial recruitment of covert human intelligence sources (CHIS, also colloquially referred to as spies, touts, grasses or agents); the intelligence from whom assists the UK intelligence agencies in understanding the threats to UK interests at home and abroad.<sup>14</sup> An independent Scotland could find that its capacity to provide intelligence from its ports on the movement of people and goods forms a basis from which to develop intelligence sharing and possibly even deeper forms of intelligence cooperation through, for example, permitting or facilitating the operational presence of UK intelligence officers on Scottish soil.

### **Intelligence liaison between an independent Scotland and the 'Five Eyes'**

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<sup>12</sup> There was clear disagreement during the independence referendum debate on the extent to which an independent Scotland would be required to participate in the EU Schengen Agreement, which is a requirement for all new EU member states and necessitates the effective abolition of border controls between the participating countries. Neither the UK nor the Republic of Ireland are signatories to the Schengen Agreement, and instead maintain a Common Travel Area across the entirety of the British Isles, effectively abolishing border controls within this area but maintaining stricter controls with contented Europe.

<sup>13</sup> Both the UK Government's counter terrorism strategy, CONTEST (HM Government 2011), and the Scottish Government's own assessment of the security implications of independence (Scottish Government 2013) recognise the international nature of the (common) threats each nation would face.

<sup>14</sup> For examples of the controversy associated with these tactics in relation to 'international terrorism' see Herald Scotland (2008, 2010), BBC News (2008) and The Guardian (2011). Similar tactics are also likely to be used in relation to other areas of security interest, including espionage.



Whilst the future intelligence relationship between an independent Scotland and the UK attracted some interest from politicians and the media, the relationship between an independent Scotland and the broader Five Eyes community featured much less in the debate on Scottish independence. The Scottish Government's White Paper on independence, for example, mentioned that an independent Scotland would 'explore the benefits' of agencies involved in cyber security, including the EU and the North Atlantic Treaty Organisation (NATO) countries, but did not mention Scotland's potential involvement in the Five Eyes arrangements. This silence is surprising given the importance of the Five Eyes to security in both the UK and Scotland under conditions of either union or independence, and the extent to which this alliance has attracted public interest following the Edward Snowden leaks.<sup>15</sup> The Five Eyes arrangement is rooted in the UK–USA Security Agreement on communications intelligence cooperation dating from the Second World War, often referred to as the UKUSA alliance. Martin Rudner (2004) usefully summarises the 'path to UKUSA', outlining how the experience of the British and the Americans in dividing up signals intelligence responsibilities in wartime led to a post-war plurilateral intelligence alliance incorporating Australia, Canada and New Zealand as additional partners. In 2004 Sir Stephen Lander, the former head of the Security Service, described the UKUSA agreement as 'central' to intelligence cooperation between the UK and the US (Lander 2004: 481). This alliance persists today and remains resilient, even when faced with challenges such as the intelligence leaks from Edward Snowden (see Walsh and Miller 2015) or contrasting approaches to dealing with terrorist threats.<sup>16</sup> A participant in fieldwork offered the example of the provision of intelligence by the US to the UK investigation into the Lockerbie bombing, and argued that 'unless you are part of that Five Eyes arrangement you don't get top tier involvement'. This participant further discussed how Scotland's membership of this club 'opened doors' to other key agencies with access to intelligence on the bombing. This 'top tier' involvement reflects Scotland's level of access as part of the UK, and can be understood in comparison to 'third party' countries that may cooperate with the Five Eyes nations (see Rudner 2004: 574; The Guardian 2013b).

Richelson's calculus is again useful in assessing the extent to which, if at all, an independent Scotland would participate in an intelligence liaison relationship with the Five Eyes nations. Just as a fully-fledged and bilateral intelligence liaison arrangement between an independent Scotland and the UK would be best served with a *quid pro quo*, so the same calculus applies to the relationship with the Five Eyes. As

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<sup>15</sup> An interest that was galvanised by the popularity of the Oscar winning documentary *Citizenfour*. The Five Eyes alliance was not explicitly referenced in *Citizenfour*; however, Snowden has leaked details pertaining to – and been critical of – the activities of this alliance.

<sup>16</sup> Perhaps the most evident difference in approaches here related to Operation Overt, the 2006 'liquid bombs' to blow up transatlantic passenger aircraft. The US authorities unilaterally ordered the arrest of a suspected 'mastermind' of the plot, Rashid Rauf, in Pakistan; thus forcing the hand of the British to undertake immediate executive action and arrest the suspects 'on the ground' in the UK before news of Rauf's arrest was made known to them (see The Telegraph 2008). This disclosed contrasting approaches to intelligence gathering and risk.

a formal alliance Scotland's membership of the Five Eyes would require that it provides a specialist contribution to the security of the existing members. Scotland's participation in the Five Eyes alliance – on the same basis that it has access under conditions of union – would depend upon the provision of 'useful intelligence from Scotland' or a 'useful service'. Some participants in fieldwork were sceptical as to the extent to which Scotland could fulfil these criteria. One participant suggested that the Five Eyes members may take the position 'You weren't giving us anything anyway because it's all done from Cheltenham [GCHQ]' and, further questioned, 'As part of a strategic UK, yes. Scotland on its own, what are we offering?'. The question posed by one participant was framed as follows, 'You don't join that Five Eyes arrangement unless they think you bring something to the party. And they've got to look over at your position and say 'the Scots are in a real good position to bring us X'. What is it that Scotland in itself would bring?'. The key to Scotland's participation in the Five Eyes arrangement, therefore, is either its access to (and willingness to share) unique intelligence or the provision of a specialist capability that is unavailable to the Five Eyes.

The academic literature has recognised how specialisation can facilitate intelligence liaison between prospective partner nations. For James Walsh (2010: 7) the gains from intelligence sharing are greater if the participating states specialise, allowing each to develop greater expertise regarding targets, in order to create more focussed and higher quality intelligence and analysis than either country could achieve on its own. A fieldwork participant noted that the Five Eyes was not averse to working with a 'small nation' – with New Zealand being the case in point – on the basis that 'smaller nations do specific things well', and meaning that the smaller nation is then able to access to the 'much broader intelligence network of the larger service'.<sup>17</sup> The provision of a specialist contribution from Scotland, however, is compounded by the sprawling capability of the Five Eyes countries, and particular that of the US. It is clear that the potential contribution Scotland could make to the UK – on either matters of terrorism and security related to Northern Ireland or the movement of people and goods through its ports – would not be a suitable basis for Scotland's participation in or membership of the Five Eyes alliance. As one participant mentioned in fieldwork 'Irish terrorism? Not a big deal for the Five Eyes'. For another participant, 'Scotland would have a challenge on its hands in relation to the Five Eyes. Realistically, what could Scotland provide to the US that it can't get from elsewhere?'. This participant also reflected upon how the prospective defence and foreign policies of an independent Scotland – particularly any strident anti-nuclear weapons stance – would also impact upon Scotland's potential entry to the Five Eyes alliance. This participant indicated how the barriers to entry into the Five Eyes alliance are not purely political or technical, but also reflect a high degree of trust built up over the years since the Second World War, which an independent Scotland

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<sup>17</sup> New Zealand has strategic importance in the South Pacific, allowing it to provide a specialist intelligence contribution to the Five Eyes alliance.

would struggle to replicate in any short or medium timescale. The most significant inhibitor to Scotland's participation in the Five Eyes network, therefore, would be its ability to provide unique intelligence to the network or a capability that is not currently available to the existing partners. This was recognised by the UK Government in its analysis of the security implications of Scottish independence, which highlighted that under the present membership of the Five Eyes alliance each partner makes a substantial contribution to the community in return for the benefits they receive (HM Government 2013).

### **Conclusion: the value of Richelson's calculus**

This article has revisited Richelson's 'calculus of cooperation' and demonstrated the importance of distinguishing between intelligence sharing and intelligence cooperation. This exercise is essential in understanding the hidden politics of intelligence in Scotland's independence referendum debate. Whilst the 2014 referendum on Scottish independence disclosed contrasting perspectives on the nature of a prospective intelligence relationship between an independent Scotland and other states, especially the rest of the UK, there was no appreciation of any distinction between intelligence sharing and intelligence cooperation. Unsurprisingly, therefore, neither of the competing, polarised perspectives offered a full picture of how a security and intelligence service in an independent Scotland would work with, and be received by, its counterpart agencies in other nations and alliances. A more detailed and sensitive taxonomy of the rationale for – and restraints upon – intelligence liaison reveals the complexities behind such prospective relationships.

During fieldwork research participants frequently reflected upon the value of the current regionalised model for the provision of security in Scotland and the UK. This research identified serious undercurrent of anxiety amongst practitioners in relation to what independence would mean for the future security of Scotland. Under the conditions of independence, wherein a Scottish security and intelligence agency would be established, participants in fieldwork considered it likely that an independent Scotland would continue to receive intelligence from its most powerful and capable neighbour, the UK, on an ad hoc basis, especially where there was an imminent threat-to-life. This would be limited, however, by the control principle and the UK's own national interest, neither of which restrictions affect Scotland under the arrangements of political union in the UK. A key issue that arises from this discussion, therefore, is the extent to which an independent Scotland would encounter an intelligence deficit compared to the level of access and capability based on the pre-independence arrangements.

An independent Scotland would seek to address any such intelligence deficit or asymmetry by establishing new forms of intelligence liaison, especially with its most powerful prospective partners: the UK and the Five Eyes alliance. Both intelligence

sharing and deeper forms of intelligence cooperation with prospective partners would be much more likely in the event that Scotland could fulfil a *quid pro quo* by returning other forms of useful intelligence or provide a specialist capability. The extent to which an independent Scotland could provide either of these returns to the UK was contested in fieldwork. In the context of Northern Ireland-related terrorism any such contribution was likely to be limited. However, an independent Scotland could find that its capacity to provide intelligence on the movement of people and goods through its ports may form a basis from which to develop intelligence sharing, and possibly even deeper forms of intelligence cooperation, with the UK. Reflecting a similar calculus, Scotland's potential intelligence relationship with the Five Eyes community was considered more problematic. To gain membership of the Five Eyes alliance an independent Scotland would be required to provide a unique capability or specialist contribution to which this community could not otherwise access on its own. In the absence of such a contribution it is possible that the existing Five Eyes participants would not wish to extend this partnership as a full, first-level partner given the potential risks involved, which are reflected in Richelson's calculus.

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## Discursive Detours on the Route to Justice for Women

by Dr Margaret Malloch, University of Stirling

### Introduction

There has been much activity within the criminal justice system in Scotland aimed at securing an approach to women in prison that is ‘radical and ambitious’; a call that was made by the Cabinet Secretary for Justice, Michael Matheson when he announced a halt to the development of a 300-bed prison for women at Inverclyde. Following his announcement, much activity was instigated as the Scottish Prison Service (SPS) and Scottish Government reviewed their plans for women, with meetings convened across the country to discuss what should happen next. There has been an admirable determination across all agencies to maintain momentum for change.

In Scotland and internationally, the deleterious impact of imprisonment on women has been widely recognised, alongside a widely shared desire to reduce the female prison population. This issue has exercised policy-makers, practitioners and academics (e.g. Carlen, 1983; Dobash et al, 1986) for many years. Ongoing attempts have been made to respond to the obstinately increasing female prison population and the severe social circumstances that many women prisoners appear to have experienced prior to their encounters with the criminal justice system (Loucks, 1997).

Given the current goodwill to grasp the opportunities that the current open landscape appears to provide, it is worth considering why it may be that despite a great deal of good will and a stated commitment to reduce the women’s prison population it remains ‘obstinately static’. This is a situation shared across the UK (and internationally) and reflected in a plethora of reviews, reports and inquiries into the imprisonment of women and potential reforms<sup>1, 2</sup>. Key reports have been based on

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<sup>1</sup> In England and Wales: Justice for Women: The Need for Reform (Prison Reform Trust, 2000); Lacking Conviction, (Prison Reform Trust, 2004); Prisons and Probation Ombudsman Report into the series of deaths in HMP and YOI Styal (2003); Corston Report (2007) as well as reports by the Commission on Women and the Criminal Justice System (2009) and ongoing follow-up reports undertaken by the Fawcett Society. In 2008, the New Economics Foundation (2008) set out an economic justification for the use of alternatives to prison. In Northern Ireland: Human Rights Commission report, *The Hurt Inside* (Scrutton and Moore, 2005) and Convery (2009) *Addressing Offending by Women for the Northern Ireland Office*. Add to this, the series of reports by HM Inspectorates of Prison for Scotland (2007, 2009, 2011), England/Wales (HM Inspector of Prisons, 1997 and 2010) and Northern Ireland; and a similar outpouring of reports and reviews internationally by both governments and organisations such as Amnesty International and Human Rights Watch.

<sup>2</sup> In Scotland, comprehensive reports by the Social Work Services and Prisons Inspectorates for Scotland (1998) and the Ministerial Group on Women’s Offending (2002) have been superseded by the Equal Opportunities Committee of the Scottish Parliament review on *Female Offenders in the Criminal Justice System* (2009) which also set out to identify underlying causes and conditions for the escalating female prison population. McIvor and Burman (2011) in a report for the Scottish Government, indicated that the female prison population was continuing to increase, largely due to the increased severity of sentencing practice; while a follow-up report from HM Inspector of Prison of HMP and

extensive consultation, evidence-gathering (written and verbal), and in discussion with women in the criminal justice system, practitioners, service providers and commissioners, representatives/leaders of key agencies and academics. Evidence has included national and international contributions which helped to locate the Scottish situation within an international context. Alongside this, academic research and analysis, evaluation and service monitoring has contributed to these key reports. Although as Corston (Corston, 2007:16) has noted: *“There can be few topics that have been so exhaustively researched, to such little practical effect, as the plight of women in the criminal justice system”*.

Basing this article on a rapid review of the key investigations into the justice system for women in Scotland, the consequences of this ‘bounded knowledge’ is considered, particularly in relation to the apparent disjuncture between ‘knowledge’ and ‘action’. Recognising the very real improvements that have been made over the years, it nevertheless considers (from a broader, structural perspective) why, despite the best of intentions from all sides, a great deal of good will, and a noticeable distance travelled, the major *problems* facing women in the criminal justice system have changed very little since the 1980s despite many changes in *practice*.

## **Background**

In an attempt to trace the almost ‘utopian impulse’ for a transformation of the use of imprisonment for women in Scotland, a rapid review was conducted of the key policy documents produced between 1982 and 2015<sup>3</sup>. These reports can broadly be grouped as: (i) System reviews (such as reports by HM Inspectorate of Prisons for Scotland, consisting of both full and intermediary reports) aimed at improving institutional arrangements within the penal estate (ii) Inquiries and Commissions (wide-ranging reviews of the system e.g. government commissioned inquiries) (iii) Academic research. They are not entirely separate; for example academic research will be used to inform both system reviews and inquiries, and vice versa. However, the parameters of each often determine the selection of evidence and focus.

There is not space here to set out the many recommendations that have been made over time; most of the attention that has focused on women and the criminal justice system in Scotland has focused on the problems of custody and, related to that, suggestions to improve practice in prison. Successive reports by HM Inspectorate of Prisons for Scotland have identified specific problems, many of which have been addressed and/or resolved over time. For example, during the 1990s, the absence of an open estate for women, lack of appropriate educational opportunities for women in prison, the need to address the specific ‘needs and aptitudes’ of women and calls for

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YOI Cornton Vale was highly critical of the conditions experienced by women prisoners, resulting from the significant overcrowding in the prison (HM Inspector of Prisons for Scotland, 2011).

<sup>3</sup> From Carlen’s report to the, then, Scottish Office – to the recent reports published in 2015 (Scottish Prison Service, IRISS). It is noted that different forms of knowledge production have different status and accordingly recommendations made have different weight and authority attached to them.

consideration of small local units (referring specifically to Aberdeen, Inverness and Dumfries) were highlighted (for example HM Inspectorate of Prisons for Scotland, 1997). Issues such as training opportunities for women, visiting arrangements and ongoing concern about medical care (especially in relation to psychiatric and psychological problems) have featured consistently in Inspectorate Reports throughout the 1990s and 2000s.

A series of reports were produced following the deaths of seven young women within a 30 month period at HMP and YOI Cornton Vale, beginning with the Social Work Services and Prisons Inspectorates report (1998) *Women Offenders: A Safer Way*. Drawing upon research commissioned for the review (Loucks, 1997) the report highlighted particular concerns for drug users as a direct result of the deaths in Cornton Vale and a recognition of the high number of problem drug users who were repeatedly incarcerated. This review went beyond the confines of the prison with most of the recommendations of the Inspectorates directly aimed at: increasing services to support the use of bail; reduce fine default; inter-agency co-operation to address key issues; tailoring social work services to meet the needs of women; separate collation of statistics/data on women; and an end to the use of prison custody for under-18s<sup>4</sup>. Arguing that there should be more options for sentencers within the community, and fewer available prison places would, the Inspectorates suggested, reduce the prison population at Cornton Vale to “100 or less on a daily basis by the end of the year 2000” (1998: 53).

A Ministerial Group on Women’s Offending, established to take forward these recommendations, produced an up-dated report *A Better Way* in 2002, which considered ways of keeping women out of prison, reflecting on recommendations made by a dedicated Inter-Agency Forum<sup>5</sup> through: prevention and early intervention (including responses to prostitution, use of arrest referral, diversion, bail and particular circumstances of young women); and community disposals (supervised attendance orders, structured deferred sentences, drug treatment and testing orders, drug courts, restricted liberty orders, a ‘time-out’ centre (later to become the 218 Centre; plans for roll out across the country did not come to fruition, see Malloch et al, 2008), and specialised services for women and specifically younger women). Aftercare provisions and the importance of facilitating access to community based services in relation to substance misuse, accommodation, employment and training, education, benefits and finance, health-related needs were highlighted. The average daily female prison population at this time (2002) was 201.

In 2009, the Scottish Parliament Equal Opportunities Committee produced their report *Female Offenders in the Criminal Justice System*, which again focused upon the quality of mental health care for women in prison; argued that more provisions for

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<sup>4</sup>Recommendations that have continued to feature in more recent reports.

<sup>5</sup> Which also produced annual reports detailing progress made – and where progress had not been made (e.g. Inter-Agency Forum, 2001).

short-term and remand prisoners were required (especially in relation to literacy and numeracy skills) and called for a speech and language therapy programme to be piloted. As with previous reports, the Equal Opportunities Committee called for consideration to be given to statutory support for women on short-term sentences on release; increased support for children of prisoners; improvement of visitor facilities and more action to stop the circulation of drugs in prison. It also considered sentencing, alternatives to imprisonment, prevention of re-offending, gender equality duty and leadership in relation to the provision of services for female offenders.

In 2012 the Commission on Women Offenders collated extensive evidence on women in the criminal justice system which was distilled into its published report. Recommendations were wide-ranging and covered ‘service redesign’ in the community (Community Justice Centres, multi-disciplinary teams and key workers, intensive mentoring, supported accommodation, national service level agreement for the provision of psychiatric reports, development of mental health services to address the needs of women with personality disorders, mental health training for criminal justice professionals). The Commission also made recommendations in relation to alternatives to prosecution (fiscal work orders, new powers for Procurators Fiscal in relation to composite diversion orders, new powers for police to divert women to community justice centres with conditional cautions); and alternatives to remand (bail supervision plus, further examination of electronic monitoring as a condition of bail, the need to ensure communication and awareness of alternatives to remand in custody).<sup>6</sup>

Other areas which the Commission considered and made recommendations on were sentencing (pilot a problem solving summary criminal court, rapid criminal justice social work reports, subsequent progress review hearings, introduction of composite custody and community sentence, and suspended sentences, training for Judicial Studies Committee) and leadership/structures/delivery (establishment of a national Community Justice service, National Community Justice and Prison Delivery Board to promote integration between SPS and the community justice system, each key agency to appoint a senior director with responsibility for women, and requested annual reports on implementation by the Cabinet Secretary for Justice).

A number of recommendations of specific relevance to the prison were also set out including the reiteration of previous concerns about links between mental health programmes and interventions in prison and the community, use of remand, staff training and significantly a call to replace Cornton Vale with a smaller, specialist prison.<sup>7</sup>

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<sup>6</sup>Echoing many concerns raised previously.

<sup>7</sup>A call previously made by Carlen in 1982 on the basis that most women could be more appropriately dealt with by non-custodial measures; the minority of women who merited secure custody could be held in a small unit; and an open unit should be provided for long-term female prisoners

SPS were proactive from the outset, commissioning Reid Howie Associates (2012) to chair a series of meetings across the country intended to consider the Commission Recommendations (specifically the six recommendations that were addressed to the prison). Earlier this year, the Scottish Prison Service held an international symposium which considered how to best move forward following the decision not to proceed with plans for HMP Inverclyde, producing a report, *From Vision to Reality: Transforming Scotland's Care of Women in Custody* (SPS, 2015)<sup>8</sup>. In response to the Commission on Women Offenders' (2012) recommendations on community provisions, mentoring schemes have been implemented across the country and community justice services established (recently evaluated by IRISS and reiterating the challenges of short-term funding as well as highlighting good practice (Dryden and Souness, 2015)).

## Discussion

International evidence shows that attempts at penal reform are limited when proposals are partially implemented, particularly those which depend upon enhanced community provisions **and** a reduction in prison places. The proposed closure of Cornton Vale and its replacement with smaller units across the country has noticeable parallels with Canada following the closure of Kingston Prison for Women (also deemed 'unfit for purpose') and its replacement with smaller institutions (Correctional Service Canada, 1990). Hannah-Moffat and Shaw (2000) and Hannah-Moffat (2001 and 2008) highlight the ways in which policies aimed at enhancing the circumstances of women within the criminal justice system are highly vulnerable to distortion and manipulation in the process of implementation and practice (see also Malloch et al, 2008).

SPS has made deliberate attempts to address criticisms made of the penal estate and appears to have made improvements when it was within its power to do so. The speed with which SPS led the debate on alternatives to the proposed HMP Inverclyde was noticeable. By comparison, in terms of community provisions, the fragmentation of community resources and the different policy areas that come under the remit of various systems have implications for the potential of 'joined-up' approaches to tackle the key problems facing women more broadly. This is an area worth exploring when considering why many initiatives are proposed but either not implemented, or only partially so.

Adopting three key frames (broadly adapted from Mathieson, 2004): - boundary-setting; implementation dilution, and offsetting the radical – provides a structure through which to consider the ways in which attempts to achieve 'radical and ambitious change' can become distorted and limited. Each frame is briefly discussed in turn:

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<sup>8</sup> The Soroptomist International (SI) and Prison Reform Trust (PRT) review of women's imprisonment across the UK, *Transforming Lives: reducing women's imprisonment* was published in 2014.

### ***Boundary setting***

There is ample evidence to illustrate that many women in the criminal justice system, and specifically those who end up in prison, have significant experiences of poverty, problematic drug and alcohol use, mental health problems, abuse, violence and bereavement. This is reflected in many of the recommendations which focus upon responding to women's 'needs' within the context of the criminal justice system, either through programmes and interventions in prison, or in specifically devised services for 'women offenders' in the community. Despite widespread acknowledgement of the significance of social problems (poverty and inequality) in relation to women's criminalisation, enquiries have consistently focused upon the penal context; even though most people involved recognise the limitations of addressing social justice issues via the criminal justice system (Carlen, 2008).

McIvor and Burman (2011) report that women do not appear to be committing more serious offences but are receiving more severe sentences than previously. It is increasingly acknowledged that the circumstances of disadvantage which feature in the lives of many women (individualised as 'criminogenic factors') who are drawn into the criminal justice system may contribute to their criminalisation. Recognising this, Soroptomists International (2014) have recommended improvements in policing and sentencing practices in relation to women. However, until attention is turned **outside** the criminal justice system, it is likely that the circumstances of the women who come **into** it, is unlikely to change. Notably, there have been some attempts to address this through policies aimed at 'social inclusion', improved support to access to benefits on release from prison, inclusion of Welfare Rights workers in services for women, and mentoring aimed at linking women into mainstream services and ensuring they are able to obtain benefit entitlements. Alongside this there is ongoing attention to effective through-care provisions; a feature of all previous reviews into the justice system for women. However, the challenges of securing effective through-care provision in Scotland continue (Malloch, 2013; Dryden and Souness, 2015). In essence, the bounded knowledge of criminal justice isolates a problem that is much more generic.

### ***Implementation dilution***

While the prison is generally viewed as a static feature at the centre of criminal justice policy, the implementation of resources in the community is fragmented and too often short-term. Similarly in Canada following the closure of the Kingston Prison for Women, the Expert Committee (2007) concluded that more focus was required to build community capacity and increase creativity at grass-roots level: "*The Committee is left with the impression that there is a lack of co-ordinated effort on the community side relative to what we have observed at the institutions*" (Expert Committee, 2007).

Although there has been significant investment in community provisions in Scotland, funding that is often provided in two year cycles can cause considerable uncertainty

for workers and service-users alike, allowing little time for services to continue beyond a set-up and pilot phase. Short-term interventions are generally unable to evidence longer-term impact (Loucks et al, 2006; Easton and Mathews, 2010 and 2011; Burgess et al., 2011, Hedderman, 2008; 2011; Dryden and Souness, 2015). ‘Alternatives’ which are suggested as significant innovations within the system are often absorbed into it in a way which softens them yet at the same time, deflects the initial critiques within which they originated. This process can also impede the transformation from short to long term goals.

There have been many recommendations aimed at sentencing practice; both in terms of the contribution that changes to sentencing practice could have on reducing the female prison population. One of the key issues identified consistently, has been the need to ensure that sentencers are aware of community-based options and have some confidence that they are effective. Again, some important developments have been made in this area. The impact of Supervised Attendance Orders and the use of Home Detention Curfews have contributed to reductions in the number of women in prison with consideration of the use of remand as ongoing.

Problematically, debates too often become formed around resources for women as ‘offenders’ rather than directed towards reducing, or abolishing, the prison. Within this context, any call for closure of the women’s prison is met with a ‘taken-for-granted’ claim that ‘something needs to be done about criminal women’. The focus is retained on criminal justice solutions, or as Sim (2009: 155) has noted “(...) whenever a crisis has erupted, the prison has ‘always been offered as its own remedy’ to its problems”

### ***Offsetting the radical***

*“Any report on Cornton Vale must take into account the desperate state in which most of the prisoners are when they arrive at the prison gate. (...) “No-one who has not been in Cornton Vale can grasp the amount of pain that is hidden behind its fence. No-one who has been in Cornton Vale can forget it”. HM Inspectorate of Prisons for Scotland (2006).*

A central recommendation from the Social Work Services and Prisons Inspectorate (2008) was that an expansion of community provisions should be accompanied by a cap on prison places. This was intended to ensure that community resources were used in place of custody thus avoiding potential problems of ‘net-widening’ where increased numbers of women were drawn into the criminal justice system to access resources that were problematically absent in local communities. This cap has never been introduced (see Tombs, 2004). Updates on the implementation of the Transforming Rehabilitation agenda in England and Wales have also noted concerns that more women may be drawn into criminal justice system and kept there for longer (All Parliamentary Group, 2015).

More broadly, the current international context is one of the ‘globalised destruction of social safety nets’ and within this context, individualising structural inequalities. Recommendations focused on the criminal justice system can result in improved services within it, but will not reduce the problems that bring women (or men) into it. The deeper social structures of society sustain the social marginalisation and disadvantage that underpin the real experiences of men and women who encounter the prison population. These issues are often seen as too overwhelming and ingrained to tackle outwith the organisational remit of reform. Calls are made instead to increase provisions in the community via criminal justice. At the same time, the ‘community’ is an ambiguous and contested concept that is not unproblematic for either women, or provisions for women. In this context ‘community’ is often assumed or presented as a solution without any real analysis of what it is or how it is gendered (Malloch et al, 2014).

### **Final comments**

While the prison population has increased, attempts to enhance community disposals have continued although without evident success in reducing the female prison population significantly. Consistent features of all the reports and enquiries into women in prison in Scotland have identified the need for appropriate mental health facilities and provisions for problem drug users in prisons which are linked into the community; appropriate education and training; reduction of use of remand and short-term prison sentences; improved access to/for families and provisions for visitors which cater for children. All have highlighted the need to develop resources in the community and to ensure effective transitions between prisons and the community. All have indicated that the female prison population could be reduced significantly without detriment to the safety of local communities.

Many recommendations have been implemented and improvements made to enhance and improve the custodial experience for women prisoners. How can we ensure the current enthusiasm for radical and ambitious action does not dissipate? This requires working beyond the criminal justice system, recognising the limitations of criminal justice agencies to secure change in isolation and harnessing the political momentum to work towards more radical and far-reaching reform through addressing the inequalities and disadvantages that are features of many local populations where ‘communities’ have been fragmented. It also requires ensuring that when radical interventions are proposed, they are able to retain that radical potential; challenges we have seen in Scotland, as indicated above, but also elsewhere following Corston (2007) and Correctional Service Canada (CSC, 2009) where strategies for change, and the innovations within them, have been diluted.

Finally, it is the broader structural issues, social, political and economic, that determine the throughput of the criminal justice system and thus any attempt at reform which does not address this will necessarily be limited. It is important to challenge the ‘uplifting liberalism’ for those at the top of the social structure, and



‘punitive paternalism’ for those at the bottom (Wacquant, 2012). Despite the limitations placed on many of the radical reforms proposed over the years, developments in Scotland are admirable within an international context and do create a space for optimism. Nevertheless, as Sim (2009) highlights, liberal reform groups have had limited success in making fundamental changes to dominant penal discourses, and for women, this can often serve to reinforce the coupling of penal and welfare governance. Current developments across the UK have highlighted the tendency to integrate prison and community penalties, and in doing so, the wider social context can remain obscure and unchallenged.

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## **To legislate or not to legislate? Stop and search for alcohol for under-18s: a review of the evidence**

by Dr Kath Murray, University of Edinburgh

### **Introduction**

Following the amalgamation of Scotland's eight police forces into 'Police Scotland' under the Police and Fire Reform (Scotland) Act 2012, the use of stop and search quickly surfaced as a controversial and divisive issue for the newly established single service. In March 2015, against a backdrop of political and media pressure, the Scottish Government established an Independent Advisory Group to review the direction and regulation of stop and search. The remit consisted of two main strands: first, to consider the use of non-statutory stop and search, a tactic that requires neither legal authority nor reasonable suspicion; and second, to draft a statutory Code of Practice. On 31 August 2015, the Advisory Group presented their report to the Cabinet Secretary for Justice, with the recommendation that that non-statutory stop and search should end. The report concluded that the abolition of non-statutory stop and search 'will not result in any significant gaps' in officers' powers (2015; 14). However, the report also acknowledged concerns raised by Police Scotland that abolition would prevent officers searching under-18s for alcohol (2015; 7). On 3 September 2015, the Scottish Government announced they had accepted the Advisory Group recommendations in full. These were tabled as a package of amendments to the Criminal Justice (Scotland) Bill, and passed at the Committee stage on 29 September 2015. The Justice Committee also passed an additional enabling amendment (tabled by the Cabinet Secretary for Justice) which, subject to public consultation, would allow an affirmative Scottish statutory instrument to provide a power of search for alcohol for under-18s, based on reasonable suspicion. To explain, officers do not have statutory powers of stop and search for alcohol for underage possession of alcohol (which is not a criminal offence). Note that officers do however, have statutory powers of seizure for alcohol under Section 61 of the Crime and Punishment (Scotland) 1997 Act, which until June 2015, were recorded as alcohol stop searches.

The aim of this paper is to examine the veracity of the case for introducing stop and search powers for alcohol for under-18s. The paper focuses on the relationship between underage drinking, deprivation and policing, with a view to assessing how a potential search power for alcohol might impact on young people from more deprived areas, whose probability of contact with the police is higher (McAra and McVie, 2010). The paper presents quantitative data analysis, drawn from three data sources. First, data from the 2013 sweep of the Scottish Adolescent Lifestyle Smoking and Alcohol Survey (SALSUS). This is a national survey on young people's substance use undertaken in Local Authority and independent schools across Scotland. In 2013, the SALSUS sample size was 33,685, drawn from thirteen and fifteen year olds. The

paper also uses open-access stop and search data available on the Police Scotland website, and data from the Scottish Index of Multiple Deprivation (SIMD), a multi-indicator measure of relative deprivation in Scotland. An overview of each data source is set out in the appendix.

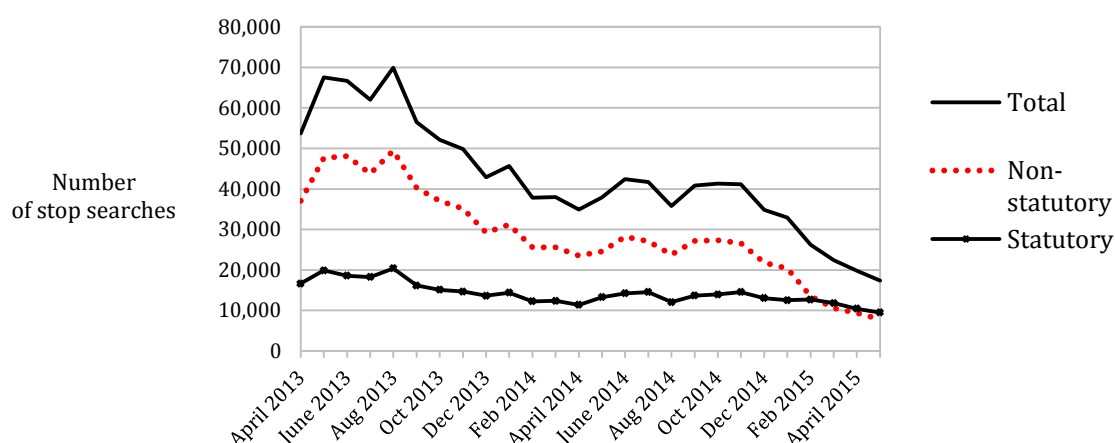
The paper is organised in four parts. To begin, the paper explains the background to the alcohol amendment and the contested landscape around stop and search in Scotland. Part two examines trends and patterns in under-age drinking using SALSUS data. The analysis shows that although underage drinking is evenly distributed in terms of background deprivation (as measured by the SIMD), young people from the most deprived areas are most likely to experience difficulties and get into trouble with the police due to underage drinking. In part, this is due to a lack of protective factors that tend to benefit the least deprived young people. Part three uses Police Scotland data to assess the size of the ‘gap’ for alcohol search powers for under-18s. The analysis shows that most alcohol is detected using existing powers of seizure under Section 61 of the Crime and Punishment (Scotland) Act 1997, rather than non-statutory stop and search. The final part of the paper weighs up the benefits and costs of stop and search powers for alcohol, and concludes that the impact of relationships between young people and the police, and the related risk of criminalisation, may outweigh the potential gain.

## **Background**

Following the amalgamation of Scotland’s eight police forces into Police Scotland under the Police and Fire (Reform) Scotland Act 2012, the use of stop and search quickly surfaced as a controversial, and in many ways defining issue for the new single service (Donnelly, 2015). In fact, a high volume approach to stop and search predated the single service by more than a decade, peaking in 2012/13, at a rate seven times higher than England and Wales. Nonetheless, in the ‘quieter’ climate that characterized Scottish policing prior to reform (Murray, 2015a), the use of stop and search remained politically and socially low-key (Murray, 2015a, Scott, 2015; 21).

Recorded search rates began to fall shortly after the Police Scotland merger in April 2013, gradually at first, and then at a galloping rate (Murray, 2015b). By June/July 2015 recorded search rates had dropped by around seventy-five percent on the same period in the previous year, principally due to falling levels of non-statutory stop and search, which historically accounted for around seventy per cent of recorded stop searches. By July 2015, the proportion of non-statutory searches had fallen to twenty-five per cent. Figure 1 shows the post-reform drop in overall, statutory and non-statutory recorded stop searches between April 2013 and May 2015.

**Figure 1. Number of recorded stop searches, April 2013 to February 2015**



Source: Police Scotland, 2015: <http://www.scotland.police.uk/about-us/police-scotland/stop-and-search-data-publication>

Note: recorded stop and search statistics in this period also include statutory alcohol seizures under S. 61 Crime and Punishment (Scotland) Act 1997.

The post-reform fall in recorded search rates can in part be linked to the unprecedented degree of criticism levelled at Police Scotland, which played out in the public sphere. Academics, journalists, opposition MSPs and advocacy groups highlighted the scale of recorded searches, the disproportionate impact on young people, and in particular, the widespread use of non-statutory stop and search, which the Scottish Human Rights Commission (2015) viewed as unlawful and open to challenge under the Human Rights Act 1998. By February 2015, the future of non-statutory stop and search appeared to be in jeopardy, at which point police executives raised concerns that a move to abolish non-statutory stop and search might result in a ‘gap’ in officer’s powers of search in relation to under-age drinking:

‘[Deputy Chief Constable Rose Fitzpatrick] said the removal of consensual stop-search would entail a “significant consequence and loss” for the police, leaving a gap which would need to be filled. She said: “If we look at our stop and searches for last year, just over a third were for alcohol and about 40 per cent of those were in relation to alcohol and under-18s. This is a big issue for society, not just the police.’ (The Scotsman, 13/2/2015)<sup>1</sup>

<sup>1</sup> ‘Police ‘need powers to search under-18s’ <http://www.scotsman.com/news/politics/top-stories/police-need-powers-to-search-under-18s-1-3689757#axzz3oA3ChyJR>

However, these statistics were muddled by recording practices that aggregated stop searches for alcohol with statutory seizures for alcohol under Section 61 of the Crime and Punishment (Scotland) 1997 Act. As noted earlier, prior to June 2015, Police Scotland recorded Section 61 alcohol confiscations as stop searches – which meant that it was impossible to calculate the number of alcohol detections that resulted from stop and search and the number that resulted from seizure. Nonetheless, as DCC Fitzpatrick suggested, it was generally assumed that a good deal of alcohol detections resulted from non-statutory stop searches.

In March 2015, Police Scotland announced that stop and search would no longer be undertaken on a non-statutory basis, unless no other statutory option was available. In practice, given the absence of stop and search powers for underage possession of alcohol, this meant that officers could continue to search young people for alcohol on a non-statutory basis. The announcement coincided with the publication of a critical report by HMICS, which also advised a move to a statutory model (2015; 4), and the establishment of the Independent Advisory Group to review the direction and regulation of stop and search. Mindful of the direction of change, which signalled a shift from the hitherto understanding that stop and search was an ‘operational matter’ (2/4/2014 MacAskill, SP Official Report col. 29702), Police Scotland also reiterated the call for additional search powers for alcohol, should non-statutory stop and search be abolished (2015; 7).

On 31 August 2015, the Independent Advisory Group presented its report to the Cabinet Secretary for Justice (Scott, 2015). The report made ten recommendations, including the abolition of non-statutory stop-and-search. On the question of search powers for alcohol for under-18s, the report stated that the Advisory Group had ‘not been able to form a concluded view on whether a gap in powers exists that could not be dealt with by existing powers, and also on whether a power to search children for alcohol would be desirable’ (Scott, 2015; 14).

A lack of consensus was also evident in the various submissions to the Advisory Group. On the one hand, the Association for Chief Superintendents (ASPS) argued for the introduction of search powers for alcohol for under-18s, should non-statutory stop and search be abolished:

‘There is a real concern, based on the perception of the role alcohol plays in driving such behaviours, that there are insufficient legal powers to search for alcohol in the absence of search by consent and a gap would be created that could leave young people exposed to a risk of harm.’

(ASPS cited in Scott, 2015; 79)

The Highland Council also expressed support for a power of search for alcohol, premised on the understanding that most non-statutory or ‘consensual’ searches related to alcohol:

‘The Local Police Commander has advised Members that around 25 per cent of stop and search activity is consensual in Highland and that it mostly relates to alcohol use because there is no legal basis to search for alcohol. He advises that the position in Highland differs from elsewhere in Scotland. With these assurances from the Local Police Commander, Members felt that there was a case for consensual stop and search but that there should be a code of practice to underpin its use.’ (cited in Scott, 2015; 75)

And a submission by Barnardo’s supported a search power for alcohol on welfare grounds:



‘We understand that Police Scotland have called for additional statutory powers to search young people for alcohol. We would be interested in wider discussion about this as we can see merit in such a move should the decision to abolish non-statutory stop and search be taken. Police should have the ability to search for, and remove alcohol from children and young people in line with GIRFEC principles, if the child or young person is putting their own health and safety at risk, this is a wellbeing concern and police should be able to deal with it as such.’  
(cited in Scott, 2015; 90)

On the other hand, John Carnochan, the retired director of the Violence Reduction Unit, argued for a more collaborative approach:

‘If alcohol is a problem, and I believe it is, then we require a collaborative and measured response if we are to effectively limit the damage and harm it can cause. Introducing a law to give police the power to stop and search those under-18s they suspect to be in possession of alcohol is neither measured nor collaborative.’  
(Submission to Independent Advisory Group on Stop and Search).

Reflecting a lack of consensus both within the Advisory Group and among the consultation responses, the Advisory Group Report recommended:

‘That the Scottish Government should hold an early consultation on whether to legislate to create a specific power for police officers to search children under 18 for alcohol in circumstances where they have reasonable grounds to suspect that they have alcohol in their possession. Such a power might also extend to searching those suspected of supplying alcohol to those under 18. The Government should ensure that the consultation process engages effectively with children and young people. In introducing any such power care should be taken to ensure that there is no consequent increase in criminalisation of children and young people.’

Having accepted the Advisory Group recommendations in full, in late September 2015, the Scottish Government tabled a package of amendments to the Criminal Justice (Scotland) Bill, together with an additional ‘enabling’ amendment, which provided for stop and search powers for alcohol for under-18s, subject to public consultation.

*Amendment 226. Criminal Justice (Scotland) Bill*

‘(1) The Scottish Ministers may by regulations amend section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 so as to confer on a constable a power, exercisable in addition to the power in subsection (1) or (2) of that section—

(a) to search a person for alcoholic liquor,

(b) to dispose of anything found in the person’s possession that the constable believes to be such liquor.

(2) Prior to laying before the Scottish Parliament a draft of an instrument containing regulations under this section, the Scottish Ministers must consult publicly on the regulations that they are proposing to make.

(3) Regulations under this section are subject to the affirmative procedure.’

In response, the Scottish Commissioner for Children and Young People urged the Committee to reject the amendment because it was likely to weigh the debate in favour of legislation:

‘Even if it is tempered by the need to consult on future Regulations, the starting point for this Amendment is an assumption that secondary legislation is likely to be passed. My concern is that an affirmative procedure is unlikely to allow for sufficient parliamentary scrutiny of a matter that is likely to have wide-reaching effects on children and young people across Scotland.’

(Scottish Commissioner for Children and Young People, September 2015)

However, the amendment passed at Committee stage, with only one vote against. Thereafter, the full package of stop and search amendments, together with the alcohol Amendment, was incorporated into the Criminal Justice (Scotland) Bill (Stage 2).

Against this background, the remainder of this paper examines the veracity of the case for introducing a search power for alcohol for under-18s. The paper examines underage drinking patterns, how officers use their powers of search and seizure in relation to alcohol, and considers how alcohol powers might affect relationships between young people and the police.

### Under-age drinking in Scotland

The prevalence of underage drinking in Scotland is widespread. Evidence from the 2013 Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) shows that 19% of fifteen year olds had drunk alcohol in the last week (SALSUS, Table A3b). Of these, 59% reported that they had been drunk (SALSUS, Table A10). The proportion of fifteen-year old girls who reported getting drunk was also significantly higher than the proportion of fifteen year old boys, at 64% and 54% respectively (ibid.). Figure 2 shows the reported ‘usual’ frequency of alcohol drinking among thirteen and fifteen year olds.

**Figure 2. Usual frequency of drinking alcohol, 13 and 15 year olds, 2013**

Frequency of drinking	Age 13	Age 15	Both ages
Almost every day	1%	1%	1%
About twice a week	2%	5%	4%
About once a week	3%	10%	8%
About once a fortnight	6%	15%	12%
About once a month	11%	18%	16%
Only a few times a year	63%	44%	50%
Never drink alcohol now	14%	7%	9%
Total (%)	100%	100%	100.00 %
Base: all pupils who had ever drunk alcohol	5,155	11,933	17,088

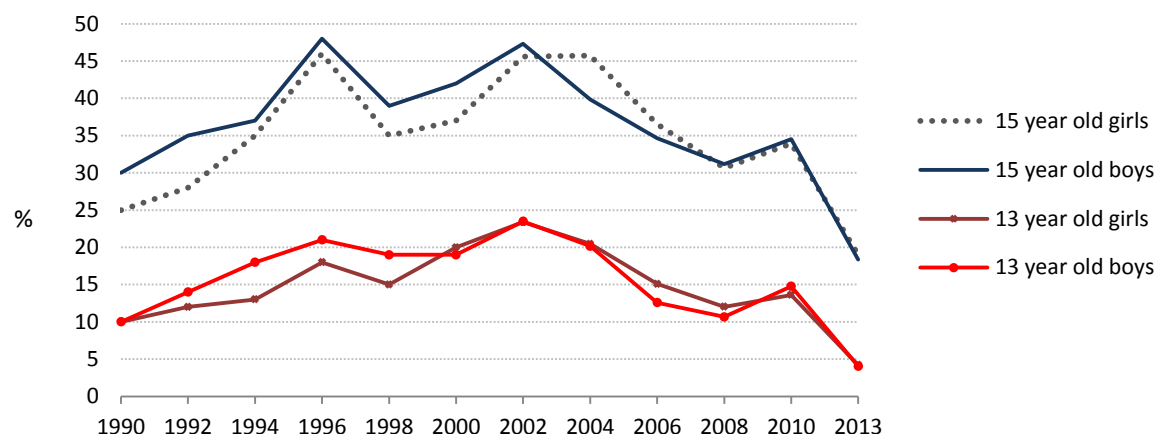
Source: SALSUS 2013 (Variables: CLASSYR, ALFREQ) Weighted data.

Cramer's V = .263 p =\*\*\* (\*p ≤ .05 \*\*p ≤ .01 \*\*\*p ≤ .001 NS = non-significant)

Figure 2 shows a significant increase between the two age groups. By the age of fifteen, sixteen percent drank at least once a week, thirty-three per cent drank between once a fortnight and once a month, and a further fifty-one per cent stated that they drank alcohol either a few times a year or not at all.

The SALSUS data also show that underage drinking is falling. Figure 3 shows that underage drinking among 13 and 15 year olds in 2013 was at its lowest level since recording began in 1990.

**Figure 3. Trend in the proportion of 13 and 15 year olds who drank in the last week, 1990-2013**



Reproduced from SALSUS, 2013. Table A3a.

Note: Not all historic data is readily available. Figures from 2002-2010 have been recalculated based on the current definition of pupils' drinking status. This has a minor impact on the 2002 - 2006 values.

Drilling further down, Figure 4 shows that the prevalence of underage drinking is broadly consistent in terms of background deprivation, as measured by the SIMD.

**Figure 4. Frequency of drinking alcohol, by SIMD (%) 2013/4**

	Scottish Index of Multiple Deprivation Score				
	Most deprived				Least deprived
	1	2	3	4	5
Almost every day	1%	1%	1%	1%	2%
About twice a week	5%	4%	5%	4%	4%
About once a week	8%	8%	9%	8%	8%
About once a fortnight	11%	11%	12%	14%	13%
About once a month	14%	17%	16%	17%	17%
Only a few times a year	50%	51%	50%	49%	49%
Never drink alcohol now	11%	9%	9%	8%	8%
Total	100%	100%	100%	100%	100%
	3,090	3,366	3,302	4,071	3,258

Source: SALSUS 2013 (variables ALFREQ, SIMD). Weighted data. N= 17,087.

In terms of location, the SALSUS data show that most thirteen and fifteen year olds drink in private indoor spaces, for example, at home, at friends' houses or at parties. Trend data also indicate that the overall proportion of those who drink outside halved between 2008 and 2013; from 33% to 15% (SALSUS 2013, Table A21). However, the 'usual location' varied

significantly by background deprivation. Figure 5 shows that those from the most deprived areas were more likely to drink outside, less likely to drink in their own homes, and more likely to drink at their friend's houses than those from the least deprived areas. Girls were also significantly more likely to drink outside than boys, at 21% and 17% respectively. Those from the least deprived areas were most likely to drink at parties or at home.

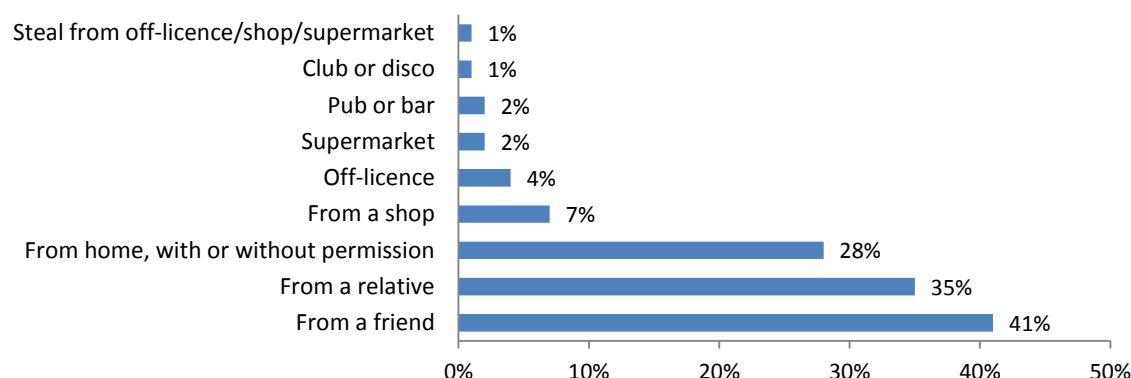
**Figure 5. Usual location of drinking, 13 and 15 year olds (%) 2013**

	Scottish Index of Multiple Deprivation Score				
	Most deprived				Least deprived
	1	2	3	4	5
At a party with friends	40%	38%	44%	47%	48%
At a friend's house	42%	36%	37%	38%	38%
At home	42%	50%	51%	48%	48%
Outdoors (street, park etc.)	23%	19%	18%	18%	17%

Source: SALSUS 2013 (variables SIMD, DRKPTY, DRKHOME, DRKFRHOME, DRKOUT). N = 16,286. Weighted data. Columns add up to more than 100% as more than one answer could be given. Only significant responses shown (p =\*\*\*).

Looking at access to alcohol, Figure 6 shows that the three main sources of alcohol for thirteen and fifteen year olds were friends, relatives, or from home, either with or without permission.

**Figure 6. Sources of alcohol, 13 and 15 year olds, 2013 (%)**



Source: SALSUS 2013 (variables STEAPSH, BUYCLUB, BUYPUB, BUYSUPM, BUYOFF, BUYSHOP, GETHOME, BUYREL, BUYFRI). N = 15,485. Weighted data.

However, sources of alcohol also varied significantly by background deprivation. Figure 7 shows data on who had most recently bought alcohol for the respondent. The statistics show that children from the most deprived backgrounds were least likely to obtain alcohol from parents and carers or from same age friends, and most likely to obtain alcohol from strangers or other people that they knew, compared to those from other areas.

**Figure 7. Who bought alcohol for 13 and 15 year olds (on the most recent occasion) by SIMD (%) 2013**

	Scottish Index of Multiple Deprivation Score				
	Most deprived				Least deprived
	1	2	3	4	5
<b>Friends and siblings</b>					
My brother or sister	6%	7%	6%	7%	9%
A friend of my own age/boyfriend/girlfriend	7%	9%	11%	12%	14%
A friend older than me	25%	23%	27%	28%	25%
<b>Parents and carers</b>					
My mother, father, carer or parent's partner	21%	29%	31%	27%	28%
<b>Strangers and acquaintances</b>					
Someone I knew of, but didn't know personally	9%	6%	7%	6%	7%
A stranger	18%	14%	8%	9%	8%
Someone else	13%	13%	10%	11%	11%
Total	100%	100%	100%	100%	100%
	1,565	1,616	1,529	1,812	1,468

Source: SALSUS 2013 (variables BUY4WHO, SIMD). N = 7,790. Weighted data.  
Cramer's V = .091, p =\*\*\* (\*p ≤ .05 \*\*p ≤ .01 \*\*\*p ≤ .001 NS = non-significant)

Relatedly, Figure 8 shows that the proportion of 13 and 15 year olds who stated that their parents did not allow them to drink alcohol at home was significantly higher among those from the most deprived areas.

**Figure 8. Proportion of 13 and 15 year olds allowed to drink alcohol at home by SIMD, 2013**

	Scottish Index of Multiple Deprivation Score				
	Most deprived				Least deprived
	1	2	3	4	5
Yes, always	3%	7%	6%	5%	6%
Yes, sometimes	63%	69%	71%	72%	70%
No, never	34%	24%	23%	23%	24%
Total	100%	100%	100%	100%	100%
	2,958	3,246	3,176	3,929	3,163

Source: SALSUS 2013 (variables ALCHOME, SIMD). N = 14,672. Weighted data.  
Cramer's V = .071, p =\*\*\* (\*p ≤ .05 \*\*p ≤ .01 \*\*\*p ≤ .001 NS = non-significant)

The fact that children from the most deprived areas are less likely to drink alcohol at home appears to be reflected in off sales usage. Figure 9 shows that those from the most deprived areas are at least as twice as likely to obtain alcohol from an off-licence or a shop as those from the least deprived areas:

**Figure 9. Proportion of 13 and 15 year olds who had obtained alcohol from an off-licence/shop in the last year, by SIMD, 2013**

	Scottish Index of Multiple Deprivation Score				
	Most deprived				Least deprived
	1	2	3	4	5
Off-licence	7%	3%	3%	4%	3%
Shop	10%	7%	6%	5%	5%
Total	2,743	3,041	2,985	3,717	2,999

Source: SALSUS 2013. N = 15,486. Weighted data.

Off-licence (variables BUYOFF, SIMD) Cramer's V = .073, p =\*\*\*

Shop (variables BUYSHOP, SIMD) Cramer's V = .071, p =\*\*\* (\*p ≤ .05 \*\*p ≤ .01 \*\*\*p ≤ .001 NS = non-significant)

More broadly, the SALSUS data suggest that children from the most deprived areas have a more problematic relationship with alcohol. Children from the most deprived areas were significantly more likely to miss school, be sick, or get into a fight due to alcohol, compared to those from the least deprived areas. Also, a significantly higher proportion of children from the most deprived areas reported getting drunk in the last week (65%) compared to children from the least deprived areas (51%). Figure 10 shows that children from the most deprived backgrounds were most likely to get into trouble with the police due to alcohol, compared to the other groups.

**Figure 10. Proportion of children who got into trouble with the police in the last year due to drinking alcohol by SIMD, 2013**

	Scottish Index of Multiple Deprivation Score				
	Most deprived				Least deprived
	1	2	3	4	5
No	82%	86%	87%	88%	89%
Once	10%	8%	7%	8%	6%
Twice or more	8%	6%	6%	5%	6%
Total	100%	100%	100%	100%	100%
	2,953	3,232	3,193	3,926	3,145

Source: SALSUS 2013 (variables TRUBPLC, SIMD). N = 16,449. Weighted data.

Cramer's V = .053, p =\*\*\* (\*p ≤ .05 \*\*p ≤ .01 \*\*\*p ≤ .001 NS = non-significant)

Taking an overview, the SALSUS data show that despite the overall consistency in terms of the prevalence of underage drinking in terms of background deprivation, young people from the most deprived areas are more likely to experience problems due to underage drinking and more likely to get into trouble with the police.<sup>27</sup> In part, this may relate to access and supervision. Children from the most deprived areas are less likely to drink at home, more likely to drink outside, more likely to use off sales, less likely to obtain alcohol through parents and carers, and more likely to obtain alcohol from strangers. This finding also chime with McAra and McVie's (2005) observation that young people from deprived backgrounds are more likely to have lifestyles that made them more 'available' for policing. Whether an

<sup>27</sup> Variables: SIMD, Wasoffschl2, Wasvomit2, Wasfight2, Wastrubplc2, drnk7.

additional search power is the best way to address these concerns is unclear, particularly bearing in mind that underage drinking is not a criminal offence. For instance, it may be that more educational or diversionary strategies are more appropriate, as well as policies which tackle adult behaviour (see part IV). The next part of the paper examines how officers use their current powers of search and seizure. The analysis shows first, that the ‘gap’ for a power of search for alcohol appears to be exceptionally small, and second, that the way in which underage drinking is policed does not always resonate with welfarist aims.

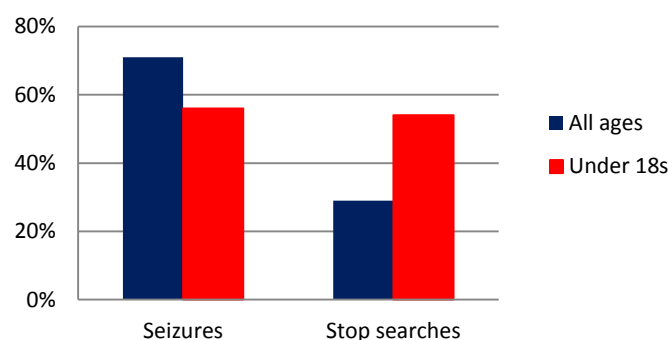
### Police use of search and seizure for alcohol

Is there a ‘significant’ gap for alcohol powers? Statistics suggest that around 40% of non-statutory stop searches recorded by the police in 2014/15 related to alcohol. However, as noted earlier, this statistic also included statutory alcohol seizures under Section 61 of the Crime and Punishment (Scotland) Act 1997. In June 2015, Police Scotland introduced an upgraded database, which records alcohol searches and alcohol seizures as separate categories. This means, for the first time, that it is possible to assess the size of the ‘gap’, or the number of alcohol detections that result from non-statutory searches. The statistics are striking.

In June/July 2015, alcohol accounted for 27% of searches and seizures. Most searches and seizures related to drugs, which accounted for 55% of all incidents. In this period, officers recorded 6,199 searches and seizures that stated alcohol as the primary reason (searches), or recovered alcohol (seizures). Of these, 71% (4,420) were statutory seizures, and 29% (1,779) were stop searches. In other words, nearly three quarters of incidents undertaken in relation to alcohol used existing statutory powers. Over two thirds of alcohol searches and seizures involved those aged over 18 (69%).

Looking at under-18s only, just over half of alcohol incidents involved seizure (1,065) and the remainder involved search (830). In other words, officers were more likely to *search* under-18s, and less likely to use confiscation powers, compared to all ages. Figure 11 shows the proportion of alcohol incidents for all ages and under-18s, by incident type in June/July 2015.

**Figure 11. Alcohol incidents by type (%) all ages and under-18s, June/July 2015**



Source: Police Scotland, 2015: <http://www.scotland.police.uk/about-us/police-scotland/stop-and-search-data-publication>

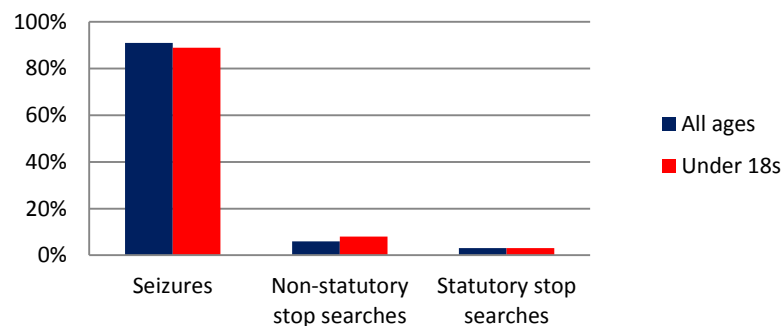
Base: All ages alcohol searches and seizures = 6,199. Under-18s alcohol searches and seizures = 1,895.

### *Detection and alcohol*

As noted, in June/July 2015, 830 searches for alcohol were carried out on under-18s. Of these searches, 11% were positive. This was much lower than the detection rate for all ages (18%), which suggests that a lower threshold for suspicion was used when searching young people. Looking at the incidents in which alcohol was actually recovered, most detections resulted from seizure. For all ages, alcohol was found in 4,872 recorded incidents in June/July 2015. Of these, 91% (4,420) resulted from seizure. Only 9% (452) resulted from stop and search. Of these, 3% (146) were on a statutory basis, and 6% (306) were on a non-statutory basis.

Just under a quarter of all alcohol detections related to under-18s (1,196). Of these detections, 89% (1,065) resulted from statutory powers of seizure, 3% (39) from statutory stop searches, and 8% (92) from non-statutory stop searches. Figure 12 shows the proportion of alcohol detections, for all ages and for under-18s.

**Figure 12. Alcohol detections by incident type (%) all ages/under-18s, June/July 2015**



Source: Police Scotland, 2015: <http://www.scotland.police.uk/about-us/police-scotland/stop-and-search-data-publication>

Base: Searches and seizures resulting in detection. All ages (n = 4,872), under-18s only (n = 1,173)

The fact that the vast majority of alcohol detections involving under-18s (89%) resulted from existing statutory powers of seizure, *not* stop and search, suggests that the case for additional statutory search powers is weak. Whilst under-18s were more likely to be searched for alcohol, compared to all ages, these searches were far less likely to result in detection, compared to all ages, indicating that the tactic was not used effectively. Most alcohol detections resulted from seizure, which suggests that the 'gap' is not significant.

### *A search power for alcohol on welfare grounds*

One of the main reasons for introducing a power of search for alcohol for under-18s is children's welfare. For instance, the Barnardo's submission to the Independent Advisory Group on stop and search recommended a search power for alcohol on welfare and protection grounds (2015). However, welfarist rationales do not always translate into police practice. Rather, a mix of welfarist and punitive rationales appear to inform the disposals used by officers in relation to underage drinking.

Taking an overview of disposals and sanctions for all age groups, of the 4,809 incidents which recovered alcohol (and nothing else) in June/July 2015,<sup>28</sup> 40% generated a crime report

<sup>28</sup> Most incidents in which alcohol is found do not uncover other items. In June/July 2015, just over one per cent also detected other unlawful items



and 30% resulted in a fixed penalty notice. Only 27% resulted in no further action, whilst 2% generated a submission to the Interim Vulnerable Persons Database.<sup>29</sup>

Looking at statistics for under-18s, the disposals are less punitive. Notably, alcohol detections were far less likely to prompt further action. Of the 1,173 incidents recorded in relation to alcohol, in 66% of cases there was no further action. The proportion of crime reports and fixed penalty notices was also lower, at 13% and 14% respectively. Figure 13 shows the breakdown of detections for all age groups and under-18s respectively.

**Figure 13. Disposals for alcohol searches and seizures by age-group, June/July 2015**

	All ages		Under-18s	
	No.	%	No.	%
Crime report submitted	1,946	40%	149	13%
Fixed penalty notice issued	1,438	30%	162	14%
No further action	1,317	27%	775	66%
Raised on the Interim Vulnerable Persons Database (iVPD)	113	2%	107	9%
Entered on the Scottish Intelligence Database (SID)	88	2%	39	3%

Source: Police Scotland, 2015: <http://www.scotland.police.uk/about-us/police-scotland/stop-and-search-data-publication>

Base: All searches and seizures which *only* detected alcohol (all ages = 4,809, under-18s = 1,173)

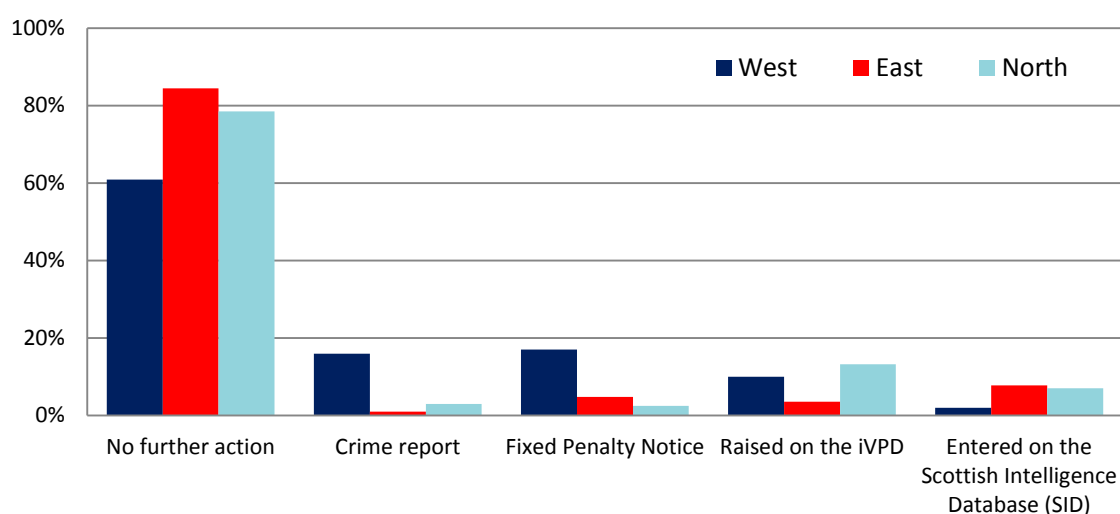
Totals do not add to 100% as more than one disposal may be generated.

However, there was significant geographical variation in the types of disposals used by officers in relation to under-18s. Again, looking at incidents which recovered alcohol (and nothing else), 84% of alcohol detections in the East resulted in no further actions, compared to 79% in the North and 61% in the West. Of the three regions, officers in the West were most likely to raise crime reports and most likely to issue Fixed Penalty Notices. Figure 14 shows the geographic distribution of disposals issued in relation to underage drinking in June/July 2015 (stop searches and seizures).

Whilst the disposal statistics in relation to underage drinking are less punitive than for all age groups, the fact that over a quarter of incidents prompted either a crime report or a Fixed Penalty Notice (27%) is striking. The statistics also point to differences in the way in which young people are policed across Scotland, with a greater degree of discretion evidenced in the East and the North, compared to the West, where 33% of alcohol detections generated a crime report or a Fixed Penalty Notice.

<sup>29</sup> The interim Vulnerable Persons Database records child and adult concerns, child offending, domestic abuse and hate crime.

**Figure 14. Disposals for underage possession of alcohol by Command Area (%) June/July 2015**



Source: Police Scotland, 2015: <http://www.scotland.police.uk/about-us/police-scotland/stop-and-search-data-publication>

iVPD = Interim Vulnerable Persons Database.

Base: All searches and seizures which *only* detected alcohol (North = 121, East = 167, West = 885).

This geographic variation reflects long-standing cultural and policy differences in Scottish policing (Terpstra and Fyfe, 2015; Murray, 2015a) which is likely to be reproduced in the use of search powers for alcohol, should this be legislated for. Put simply, young people in the West appear to be policed with less discretion than those in the East and the North. In part, this observation may relate to the enforcement-based, command-and-control style of policing used in Strathclyde police from 2007 onwards under Chief Constable Sir Stephen House, and appropriated nationally under Police Scotland from April 2013 onwards:

As Sir Stephen House (2013: 9–10) emphasized in a public lecture, ‘the unique selling point that we [the police] have is that we are an enforcement agency’ (Terpstra and Fyfe, 2015: 539).

At the time of writing, following the resignation of Sir Stephen in August 2015, the direction and tenor of Scottish policing remains uncertain. Nonetheless, established differences in policing styles and cultures across Scotland mean that a welfarist approach to the use of alcohol powers cannot be assured. The final part of the paper draws together the main findings and assesses the costs and benefits of a stop and search power for alcohol.

### **A stop and search power for underage alcohol: cost and benefits**

‘[W]e should judge any new law not on the benefit it provides when applied correctly but rather the damage it will do when applied incorrectly. I see little benefit in this proposed legislation but I do see the potential to damage the relationship between a police service and a significant part of the public it serves.’ (John Carnochan, 2015)

It is widely recognised that alcohol misuse is a major social problem in Scotland, associated with violence and ill-health (Scottish Government, 2008, 2009, 2012). In 2009, the Scottish Government published 'Changing Scotland's Relationship with Alcohol: A Framework for Action'. The Framework resulted from an earlier discussion paper (2008) which adopted 'a new and visionary approach, recognising the need to change Scotland's relationship with alcohol so that we can realise our potential as individuals, families, communities and as a nation' (2009; 4). In line with this outlook, the Framework advocated a preventative, multi-stranded partnership approach to tackling alcohol abuse, with the aim of achieving 'real, lasting social and cultural change' (2009; 15). A number of proposals related to children and young people, which were diversionary or educational in tenor, or aimed at tackling adult behaviour, including licensing. For example, the Framework proposed: improving misuse education in schools; supporting diversionary and youth work opportunities; providing support for off-sales test-purchasing programmes and tightening restrictions on alcohol advertising. The Framework also supported related educational initiatives to raise awareness among young people of the dangers of knife-carrying, and supported the Community Initiative to Reduce Violence (CIRV), an initiative introduced by the Violence Reduction Unit in 2005 to tackle collective violence in the East End of Glasgow. In a progress report published in 2012, the Scottish Government stated that it would invest £126 million over the next three years to support the continued implementation of the alcohol framework. The salient question is whether a search power for underage possession of alcohol would make a constructive contribution to the existing strategy; or act to exacerbate some of the difficulties experienced by young people in relation to alcohol, particularly those from the most deprived areas.

To recap, the SALSUS data show that the overall distribution of underage drinking in terms of background deprivation is relatively even. However, it also seems clear that children from the most deprived areas have a more difficult relationship with alcohol. At first glance, this observation appears to support additional stop and search powers for alcohol, principally on welfare and protection grounds. However, the case is not clear-cut on several counts, as explained below.

First, research evidence shows that adversarial contact with the police is more likely to draw young people into the criminal justice system. Drawing on data from the Edinburgh Study of Youth Transitions and Crime (ESYTC), McAra and McVie (2005, 2010) show that working class children were more likely to come to the attention of the police than their middle-class counterparts. Previous police contact also acted as a key factor in predicting future police contact, even when controlling for other factors such as offending behaviour. Significantly, children drawn into the youth justice system were more likely to maintain their involvement in serious offending. McAra and McVie concluded that there was a serious risk of criminalisation amongst those young people, generally the most vulnerable and deprived, who were repeatedly recycled around youth justice services, with little support. Note that these findings hold whether the contact is on a punitive basis, or on welfarist grounds, for instance, through the Children's Hearing System. Either way, contact with the criminal justice system was more likely to draw young people in, to label young people, and to increase the likelihood of further offending.

The findings from the ESYTC underpin Scotland's progressive Whole Systems Approach (WSA) to Youth Offending, which aims to keep young people out of the criminal justice

system (Scottish Government, 2015). However, as McAra and McVie caution, there is a tension between the increased use of stop and search, and the development of WSA in dealing with young people, premised on minimal intervention (2015; 291).

Second, the policing of underage drinking does not reflect the demographics of underage drinking, far from it. Rather, there appears to be an uncomfortable degree of hypocrisy in terms of underage drinking, deprivation and policing. Whilst the overall prevalence of underage drinking is more or less even in terms of background deprivation, young people's experiences of alcohol are very different in terms of background, as is the way in which society responds to young people from deprived areas. Children from the least deprived areas benefit from protective factors. They are more likely to drink at home and are less likely to obtain alcohol through strangers or to use off licences. Children from the most deprived areas do not benefit from these factors. Children from the most deprived areas are significantly more likely to source alcohol from off sales, to ask strangers to buy alcohol and to drink outside. These differences in terms of supervision and access to alcohol are also likely to put children from the most deprived areas at greater risk of adversarial police contact. As John Carnochan argues, a stronger and fairer case can be made for tackling responsible adults and targeting off sales in more deprived areas:

What about policing those off sales that sell to under-18s? It might be a better use of resources to have a local authority enforcement officer on duty outside every off sales to ensure compliance... How about taking the licences off those shops immediately that they breach the rules and sell alcohol to children. Judicial hearings would obviously follow but the licence would be revoked until the hearing.' (2015; 3).

Third, the available evidence on disposals does not point to a welfarist policing response, particularly in the West of Scotland. Recall that over a quarter of underage alcohol detections in June/July 2015 resulted in either a crime report or a Fixed Penalty Notice, whilst in the West, 33% of underage alcohol detections led to either a crime report or a Fixed Penalty Notice.

Fourth, the case for stop and search alcohol powers hinges on the assumption that the potential impact on violence and disorder would outweigh the costs in terms of the impact on police-community relationships, and the ability of the police to do their job more broadly. Yet despite decades of research, there is no robust evidence to support this argument (Delsol and Shiner, 2015). Whilst stop searches can detect or disrupt offending behaviour, the wider preventative or deterrent effect is unknown. Specifically, there is no empirical evidence on the marginal effect of stop and search on deterrence, or as Hales (2015) puts it, 'how much deterrence you get for x additional stop and searches'. This observation does not discount the possibility that stop and search can prevent violence and disorder, which may seem intuitive in relation to alcohol. Nonetheless, the relationship has not been meaningfully quantified or substantiated.

On the other hand, there is a strong body of evidence that shows if stop and search is used unfairly it can damage police-community relationships (Stone and Pettigrew, 2000; Bland et al. 2000; Miller et al., 2000; LSE/Guardian, 2012, Open Society/Stopwatch, 2013; Fratello et al., 2014). A small body of research evidence also points to the adverse impact of stop and search on young people's relationships with the police in Scotland (Anderson et al., 1994; Reid Howie Associates, 2001, Cook, 2015). For example, a small-scale study of vulnerable

young people commissioned by the Centre for Youth and Crime Justice based at the University of Strathclyde reported poor relationships with the police, in part, exacerbated by stop and search:

‘Most of the young people seemed to feel that the police were a service simply best avoided, talking about being stopped and searched, sometimes repeatedly throughout the day, and the sense of injustice and alienation that this breeds in the relationship. A big issue also seemed to be the perceived inconsistencies in police treatment of young people, and the fact that meeting the ‘rare good guy’ doesn’t change your opinion of the rest.’ (Cook, 2015; 8)

Given the extent to which stop and search has been used in Scotland in the last decade, there is a risk that additional stop and search powers may incur further damage to relationships between and police and young people. Whilst Scottish policing has broadly cleaved to a consensual imagery (Gorringer and Rosie, 2010), there are regional differences in the way that young people are policed, some more enforcement-based than others (Fyfe, 2010; Murray, 2015a). Looking ahead, a more constructive and fairer approach will require time, resources and a clear steer from senior officers to address these inconsistencies. Additional enforcement powers are unlikely to facilitate this direction.

Finally, the argument in favour of alcohol legislation assumes that the removal of non-statutory stop and search will result in a ‘gap’ in relation to underage possession of alcohol. Preliminary data from the updated stop and search database does not appear to support this argument. Strikingly, only eight per cent of alcohol detections in relation to under-18s in this period resulted from non-statutory searches, whilst eighty-nine per cent of detections resulted from existing statutory powers of seizure under Section 61 of the Crime and Punishment (Scotland) Act 1997. As Chalmers (2015) observes, the fact that the power of seizure for alcohol under Section 61 does not extend to a power of search was intended to minimise tension between young people and the police. The Scott Report also acknowledges this point:

‘The absence of such a power was mooted as “one of the great strengths” of the legislation as it was feared that the exercise of such a power might create tension and conflict between the police and young people. This is something the Scottish Government and Scottish Parliament ought to keep in mind when exploring the merits of a new power to search for alcohol.’ (Scott, 2015; 37)

The Police Scotland statistics add further weight to this observation. The fact that most alcohol detections result from seizure, not search, together with the risk of criminalisation should a power of search for alcohol be introduced, suggest that statutory powers of seizure under Section 61 are sufficient.

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## **Appendix 1. Data sources**

### *Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) 2013*

SALSUS is the primary source of data on substance using behaviour among young people in Scotland. The 2013 survey is part of a long running series of national surveys of young people's substance use. From 1982 to 2000 these were carried out jointly in Scotland and England to provide national information on smoking behaviour (from 1982), drinking behaviour (from 1990) and drug use (from 1998). In 2002, Scotland introduced its own (SALSUS) survey. The survey provides national policy makers with vital information to help develop and evaluate policies to reduce the prevalence of substance use in Scotland and to monitor progress towards achieving Scottish Government targets. It is an ideal data source with which to inform the debate on stop and search powers for alcohol. An overview of the 2013 main findings may be accessed here:

[http://www.isdscotland.org/Health-Topics/Public-Health/Publications/2014-11-25/SALSUS\\_2013\\_National\\_Overview.pdf](http://www.isdscotland.org/Health-Topics/Public-Health/Publications/2014-11-25/SALSUS_2013_National_Overview.pdf)

### *Scottish Index of Multiple Deprivation (SIMD)*

The SIMD is one of the most commonly used statistical indicators of deprivation in Scotland, and can be used to map out both the distribution of overall deprivation, and identify areas most adversely impacted by certain types of deprivation. The SIMD provides a multi-dimensional indicator of relative deprivation which measures deprivation in relation to seven domains (employment, income, health, education, geographic access, police recorded crime and housing). An overall measure of deprivation is constructed from the weighted sum of the seven domain scores. Deprivation scores are calculated at the 'data zone' level (which have a median population of 769), and are ranked from 'most deprived' (1), to 'least deprived' (6505). Deprivation is most commonly framed in terms of a 15% cut-off point (equivalent to 976 zones), which describes the 15% 'most deprived' areas or zones.

### *Police Scotland stop and search statistics*

In June 2015 Police Scotland introduced an upgraded database which led to a significant improvement in recording standards. Additional data-fields include the legislative powers used by officers when carrying out a search as well as the grounds for searching people. The introduction of a separate recording field for statutory seizures also means that police practice is captured far more accurately. In late September 2015, data for June/July 2015 were released. Clearly, these data provide a very small snapshot. However, they are more detailed and accurate than data previously released by Police Scotland, and provide important insights into police practice.



## **SASO Student Essay Prize Winner 2014**

### **How might an understanding of ‘community’ and ‘place’ help us prevent crime?**

by Zoe Russell, University of Stirling

‘Community’ and ‘place’ are concepts which have long been considered important in relation to crime, especially as processes of urbanisation have reshaped communities, bringing larger populations of people into cities. While there have been significant shifts in the relationships between crime, disorder, communities and places, there are important continuities in the identification of specific places, populations and behaviours as disorderly and criminal (Law et al, 2010). This paper critically evaluates criminological and political identifications of criminal and ‘problem’ populations and places. First, it situates current ideas about community and place within longer political and historical traditions, before exploring the concepts of social disorganisation and underclass. Second, it focuses on how these two concepts have influenced contemporary criminal justice and social policy and; third, it critically addresses ideas about ‘problem’ places and ‘problem’ communities, exploring ambiguous and idealised conceptions of ‘community’, segregation and constructions of ‘other’, fear of crime, responsabilisation of ‘problem’ communities and state-defined and hidden crime.

Criminological interest in crime and the city is not new, going back at least to the work of Engels in the 1800s in Scotland. Law et al (2010: 47) highlight that during the Victorian period, the middle and upper classes were particularly anxious that ‘morally suspect and politically dangerous lower classes festered in the bowels of the city’. Thus recent concerns about problem communities and problem places are situated within a long tradition of general concerns about social order and the effect certain people and places have on this order. ‘Community’ is an especially interesting concept, as it has been depicted as both the cause of crime and disorder, as well as the cure for it (Lacey and Zedner, 1995). Williams (1983 in Cochrane, 2007:48) points out that community is unlike any other term of social organisation as it seems never to be used unfavourably. Community is always deemed as ‘good’, to have been stronger in the past and to provide a moral basis for behaviour (Cochrane, 2007). The ‘seductive rhetoric of community’, is made evident by the continuous and increasing popularity of the concept with politicians and practitioners (McLaughlin and Muncie, 2007).

In the 1960s in the US, rhetoric surrounding the concept of community was based around ‘the rebuilding of family forms and the remaking of traditional communities...as the means of solving social problems’ (Cochrane, 2007: 49). Similarly, in the UK in the 70s and 80s, notions about ‘community’ were a key feature of Thatcher’s Conservative policy-making, as community came to be seen as a central site for a solution to many contemporary crime problems (Reiner and Cross, 1991 in Squires, 1999). Cochrane (2007), highlights that such notions never really

disappeared as a focus of social policy and were substantially rejuvenated in the 1990s. New Labour were particularly enthusiastic towards ideas of community and neighbourhood in relation to crime prevention (Lacey and Zedner, 1995) and these concepts were central to the Party's rhetoric of modernization and unequivocally associated with specific notions of 'civic responsibility and citizenship' which informed efforts to tackle problems of social exclusion and to reform the welfare state (Cochrane, 2007: 51). In contemporary criminal justice policy, there is emphasis on community crime prevention and prioritising 'the participation of members of the community in the active prevention of crime and related incivilities' whilst looking 'for causes of crime and disorder in the fabric of community and its wider social environments' (McLaughlin and Muncie, 2007: 49).

Hope and Shaw (1988a) identify two ways in which the concept of community has been invoked in criminological thought: the 'disorganized community' and the 'disadvantaged community' (Walklate in McLaughlin and Muncie, 2001). The former is based on Chicago School sociologists Shaw and McKay's (1942) theory of social disorganisation, and grounded in conceptualisations of Chicago in ecological terms, and 'the manner in which cities expand and become internally differentiated' (Downes, 2007). The postulation of the zonal hypothesis embodied the idea of the evolution of cities in a series of concentric zones of activity and life and lead to the construction of the 'zone in transition' as a socially disorganised community, of which crime was an inherent feature (Carrabine et al, 2009). For Shaw and McKay, 'social disorganisation exists in the first instance when the structure and culture of a community are incapable of implementing and expressing the values of its own residents' (Kornhauser, 1978: 63). Downes (2007) adds to this the companion concept of weak social control in which people can be neither effectively curbed, nor curb each other. Sampson and Groves' (1989) classic work followed the same principles and logic of Shaw and McKay's theory, combined with more recent ecological research, and supported the theory of socially disorganised communities as characteristically high in rates of criminal victimization and offending (Veysey and Messner, 1999). Thus an absence of shared values and norms and ultimately the failure of community life is the key to understanding offending behaviour. Hence securing and fostering social organisation through the socialisation process is seen as the solution to crime prevention (Walklate in McLaughlin and Muncie, 2001: 317). Later criminological work by Murray (1990) on the 'underclass' was influential in terms of his conceptualisation of the disadvantaged community. Ideas about a so-called 'underclass' are not new within criminological thought, and can be found throughout history under different names, for example, from the 'lumpenproletariat' to the 'undeserving poor' (McLaughlin and Muncie, 2007). Murray re-popularised the idea; claiming to have 'discovered' the existence of a new 'underclass' characterised by moral and cultural 'otherness' and self-exclusion (McLaughlin, 2002). Murray blamed the welfare state for creating a population with pathological values and attitudes, characterised by three particular indicators; illegitimacy, criminality and refusal to enter the formal labour market (McLaughlin and Muncie, 2007). Thus

communities were pathologically locked in a criminal spiral as new generations of youngsters were socialised into criminal behaviours. Murray (1990) advocated radical social policies to stimulate a new spirit of family and community values, and stressed the need for more deterrent and punitive criminal justice policies, re-stigmatisation of illegitimacy and withdrawal of state benefits from unmarried mothers and jobless young men.

The debate about the threat posed by the white underclass, was intensified by steeply rising crime rates, head-line grabbing murders, escalating fear of crime, rioting and new forms of disorder associated with youth cultures (McLaughlin, 2002). Leading commentators from across the political spectrum, gave warning of the potentially awful implications of an accelerating number of 'edge' and 'sink' estates, where the break-down of law and order and civil society was inherent, and crime, violence and disorder were endemic (McLaughlin, 2002). In Scotland, media and policy have represented the 'problem council scheme' as virtually indistinguishable from its inhabitants, a population of unruly and criminal 'neds' (Law et al, 2010). Ned-culture, is thus embedded in the negative image of council schemes, which are portrayed as criminogenic environments, characterised by a culture of 'worklessness', 'welfare dependency' and criminal behaviour (Law et al, 2010). Cochrane (2007: 71) highlights an underclass theme in social exclusion policies in the UK under New Labour, embodied in a speech by Tony Blair, who in reflecting on social disorder and crime in Britain's urban housing estates pinpointed an 'underclass of society, cut off from society's mainstream' and attributed the breakdown in law and order to the break-up of strong and cohesive communities (McLaughlin, 2002). Crime and disorder are highlighted then as a key feature of 'problem' communities and problem places, the solution to which lies within the prospect of restoring social and moral cohesion and traditional community values, ensuring inclusion into mainstream society (Taylor, 2003). However, as highlighted by Squires (1999), this notion is fundamentally problematic.

In the first instance, Cochrane (2007) points out that the existence of communities is considered a given whilst in reality they are often elusive. This is rooted in definitional problems, namely a lack of clarity in what or who constitutes a community and the identification of said 'community' (Walklate in McLaughlin and Muncie, 2001). Cochrane (2007: 49) suggests that not only is community an elusive concept, but is 'ideologically slippery', and is used 'as if it were an aerosol can, to be sprayed on to any social programme, giving it a more progressive and sympathetic cachet' (Cochrane, 1986). For Crawford it is wrongly assumed in mainstream discourse that a lack of community necessarily leads to crime whilst more community equals less crime (McLaughlin and Muncie, 2007: 50). Levitas (2000: 194) is especially critical of the concept, claiming that 'the role of community is to mop up the ill-effects of the market and to provide the conditions for its continued operation, while the costs of this a borne by individuals rather than the state'.

Communities are idealised as places in which familiarity and security help people to define their social identity and position (Kearns and Parkinson, 2001). But focusing on creating social cohesion through shared norms and values within communities has negative consequences, for example the 'construction of protected and exclusionary spaces' (Cochrane, 2007: 72). Fear of crime, has been extended beyond urban space, representative of concerns that disorder is a staple of everyday life (Law et al, 2010). With fear of crime intensifying, and as safety has moved from being a social good to a commodity (Hope, 1995), differential access to resources has resulted in withdrawal of elites from the inner-city to protected enclaves in search of security (Low, 2003). For Davis this represents an 'ecology of fear' in which protected enclaves are created to exclude anyone who may pose a danger to the community (Carrabine et al, 2009). These enclaves provide sought after security though new technologies and the creation of defensive exclusivity, serving to insulate communities from dangerous outsiders (Atkinson and Flint, 2004). This is captured particularly in the increasing prevalence of the gated community (Blakley and Snyder, 1997); Atkinson and Flint, 2004).

'Elite' gated communities reflect the ability of the middle and upper classes to use their wealth to privatise their security concerns, thus maintaining their community and excluding all 'others' (Blakley and Snyder, 1997). The 'security zone' community is characterised by 'closed streets and gated complexes of the inner-city, suburban and street-barricade perches', and security guards, gates and fences are being used to exclude drug-dealing, prostitution, and drive-by shootings. Neighbourhoods frightened by 'spill-over crime' are procuring permission from the city to prevent public use of streets and limit access to residents (Blakley and Snyder, 1997: 93). Atkinson and Flint's (2004) study of gated communities in the UK revealed residents' concerns that surrounding neighbourhoods were especially crime-prone whilst in reality they had very low crime rates. In fact there has been little evidence to suggest that gated communities actually do anything to reduce fear of crime (Low, 2003) and may even increase sensitivity to it. Whether the threat of crime is actual or perceived, the fear is real, as is the resulting exclusion and segregation of homogenous groups from wider society (Blakley and Snyder, 1997).

This segregation and exclusion is a result of the search for security, increasing fear about 'other' people and 'other' places as a threat to urban prosperity (Law et al, 2010) and desire to avoid day-to-day incivilities and random social contact (Atkinson and Flint, 2004). For Blakley and Snyder (1997), this pulling away of elite groups from participation in society should be considered particularly disconcerting and detrimental. Atkinson and Flint (2004: 889) point out that on the policy agenda in the UK potential social problems arising from gated communities have yet to be considered; 'If policy-makers believe that residential segregation and homogeneity are...problematic for deprived areas it is difficult to continue to turn a blind eye to the withdrawal of middle and upper income households into their own ghettos'.

An increase in gated communities in the UK is likely to entrench the construction the lower classes as feared 'other', reminiscent of the construction of black people as 'other' in the UK in the 70s and 80s (McLaughlin, 2002), and in America today. Hence, Gilroy's (1987: 235) argument that: 'community is as much about difference as it is about similarity and identity...domination and subordination between one community and another' is as relevant today as it was in the 80s.

Increasingly problematic in trying to involve communities in crime prevention, is the responsibilisation of the community for problems that should fall on the state to resolve. Levitas (2000: 196) argues that capacity building, and community development, represent ways of expecting poorly resourced communities to 'pull themselves up by their collective bootstraps' and suggests that the poor are stigmatised and responsabilized for their supposed lack of 'social-capital' which should not be intended to replace economic capital. 'Problem' communities have been identified in UK social policy as lacking in various 'normal' societal attributes; 'the erosion of social capital...the contact trust and solidarity that enables residents to help, rather than fear, each other' (Social Exclusion Unit, 2000). Social capital, is at best a problematic concept, but has been accepted (along with the likes of 'social exclusion') as a credible term to explain criminal populations and communities. Mayer (2003) argues that social capital provides non-market conditions for economic growth and as such redefines the social as the economic and responsabilizing communities to increase social capital through community programmes, fails to acknowledge how the community became this way in the first place. It is implied that everyone has access to capital and that community mobilization can solve the problems of uneven development and marginalisation (Mayer, 2003). Government support for the privileged further impoverishes poor communities and populations, through the impacts of tax evasion and corruption (Law et al, 2010). As Cochrane (2007: 56) puts it, it becomes the task of the community to 'adapt to external pressures (such as the impact of economic globalisation, or the effects of neoliberal restructuring) by drawing on or building social capital to remake themselves effectively'. Hope (1995) suggests that instead of communitarian self-help, disintegrating urban communities need significant investment in their institutional infrastructure to counterbalance the powerful tendencies of destabilisation of poor communities within the urban free-market economy.

Finally, by identifying particular places and behaviour as anti-social or criminal, other crime is subsequently hidden; particularly corporate and environmental crime and that which occurs in the privacy of the home (Coleman, 2004). Squires (1999) highlights that community safety and crime prevention activity, reflects a particular view, that of a population characterised largely by white, middle-class, middle-aged males and as a result crimes against women, young people, minority ethnic group members and gay men and lesbians are not viewed as community problems. Furthermore, Levitas (2000) points out that community safety is always intended to refer to safety from 'crime and disorder', rather than safety from 'traffic air pollution, poisonous or

genetically modified food, contaminated water supplies, collapsing sewers or exposure to radiation leaks from nuclear installations, or incompetent or femicidal doctors.’ Coleman (2007: 39) argues that urban crime prevention has been reduced to ‘a set of procedures for the reduction of legally-defined ‘crime’ and state led definitions of ‘wrongdoing’ and ‘anti-social behaviour’, which can be said to perpetuate ideological hegemonic ideas about crime and disorder, such as that of ‘problem’ communities and ‘problem’ places.

Ultimately it has been argued that through criminological theories of social disorganisation, and underclass, and recurrent ideological ideas about crime and disorder, the community is pinpointed as the cause of, and the solution to crime, whilst problem populations and places are ‘discovered’ and constructed as criminal and deviant. It has been argued that this understanding is fundamentally problematic because of; the lack of clarity concerning the concept of community and the dubious existence of ‘community’, the increasing segregation caused by a fear and suspicion of ‘other’ perpetuated by stigmatisation of problem place and communities, the responsibilisation of problem communities and the focus on a particular type of crime, shaped by state definitions and hegemonic conceptions of crime and disorder. The recurrent nature of arguments about ‘problem’ places and ‘problem’ communities, suggests that criminological enquiry is bound up with political and ideological constructions of crime, which do nothing to reduce actual fear of crime, and perpetuate ideas about what constitutes crime and disorder, whilst inequality and segregation increase and socially damaging crimes go ignored. Thus it could be argued that it is time to move on from the regurgitation of such arguments and from a study of crime synonymous with political rhetoric and ideology.

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## **SASO Chairman's Report, 2013-2014**

### **Introduction**

I am delighted to present this, my third annual report as the Chairman of the Scottish Association for the Study of Offending. This has been another busy and successful year for SASO. The number of active branches has increased and there are thriving programmes across Scotland. I am grateful to everyone who has contributed to the success of SASO this year.

### **Annual Conference**

Once again we held a well-attended annual conference which generated a great deal of interest and debate. We returned to Dunblane Hydro Hotel in November 2013, with the conference title "Reforming Justice: Reforming Scotland".

In the year running up to the independence referendum, we wanted to explore and discuss issues of justice and punishment in contemporary Scotland. Our conference chair was Colin McConnell, the Chief Executive of the Scottish Prison Service, who guided us thoughtfully over the two days. I am particularly grateful to him for supporting SASO in this significant way.

Unfortunately our planned opening keynote speaker, Professor Sir Anthony Bottoms from the University of Cambridge, was unable to attend due to illness, but we were very fortunate to hear in his place Dr Mary Rogan from the Dublin Institute of Technology: *Driving Penal Reform*. She was followed by the Auditor General for Scotland, Caroline Gardner: *The Case for Reform: Making Justice Effective and Efficient*. The afternoon concluded with an address from Professor Fergus McNeill, the University of Glasgow: *What is Justice?*, before he introduced a number of short films: *Shared Sentences*, made as part of the participants' community payback orders. Before the conference dinner, a reception was kindly hosted by the eight Community Justice Authorities. Councillor Peter McNamara, the lead convener, welcomed the delegates to the dinner. Our excellent and entertaining after dinner speaker was Sheriff Principal Brian Lockhart. We also awarded the SASO annual essay prize to this year's winner, Maureen McBride, for her essay entitled *Can new legislation succeed in wiping out sectarianism in Scotland?*

On Saturday morning Sheriff Tom Welsh QC, the Director of the Judicial Institute for Scotland, spoke on: *The problem solving approach to justice and the courts*. This was followed by Jim Kerr, the Governor of HMP Greenock: *Re-focusing Prison*. The final session of the morning was the practitioners' panel, which examined the subject of: *Addressing Conflict outside the Court System: Some Reflections on Alternatives*. John Sturrock QC chaired the panel, which comprised Ian McDonough from SACRO and Professor Bill Whyte from the University of Edinburgh.

After lunch an interactive session was led by Chief Inspector Jim Royan of the Police Service of Scotland, which looked at *Policing Dilemmas*, and led to some lively discussions. Our final two conference speakers were Deputy Chief Constable Rose Fitzpatrick, the Police Service of Scotland: *Policing with a single force: the aims of reform*, and Kenny MacAskill, the Cabinet Secretary for Justice.

As in previous years, there were a number of exhibitions by third-sector organisations and Community Justice Authorities. I am grateful to all our speakers and contributors, and to all those who worked so hard to plan and deliver such a successful conference, in particular our administrator Irene Cameron.

### **Branches**

Throughout this year our network of local branches has continued to thrive and grow. They provide many opportunities for members of SASO and others to meet to hear well-informed lectures and debates and to discuss issues of relevance to justice in Scotland. The Glasgow Branch has had another busy year with a full programme of debates, lectures and a day conference. Their programme began with a debate on Human Rights and concluded with a day conference on children as both victims and offenders. During the year, the Branch Chair, Sheriff Rita Rae QC, was appointed as a High Court judge, for which we warmly congratulate her. She decided that the time was right for her to step down as Chair of the Glasgow Branch. I am very grateful to Lady Rae for her energetic and committed leading of the Glasgow Branch for 11 years. I am pleased that Sheriff Daniel Scullion has taken over as Chair of the Glasgow Branch.

I am also pleased to report that the Aberdeen, Orkney and Shetland Branch of SASO has been re-established after a number of years in abeyance. Sheriff Graeme Napier is the Chair of the Branch, which had its inaugural meeting in January 2014.

The Edinburgh Branch, chaired by Sheriff David Mackie, met regularly throughout the year and heard presentations from Families Outside, The Robertson Trust, the Scottish Government Justice Analytical Services, G4S and HM Chief Inspector of Prisons for Scotland, amongst others. Likewise, the Dumfries and Galloway Branch, chaired by Bill Milven, met six times throughout the year and studied such topics as men who commit sex offences and domestic abuse offences, the impact of imprisonment on families, youth crime, short term prisoners and their families and Police Scotland – One Year On. Fife Branch, too, held a number of events focusing on women offenders and young people. SASO Council continues to support the re-establishment of branches in other parts of Scotland too.

### **Council**

I am grateful for the continuing support of the Council of SASO to oversee the Association and to consider its future development. Last year Sheriff Seith Ireland joined the Council and has made a valuable contribution to our work.

During the year we established a Finance Working Group to determine how we might put the Association's finances on a firmer footing. The Group produced a number of recommendations which have helped to stabilise our financial position. One recommendation will be considered at the 2014 Annual General Meeting – to increase the annual subscription to £30 (and to £15 for reduced rates). We have also written to life members to alert them to our financial position and to invite them to consider an annual donation. Following our conference last year, we have received a number of additional gifts from members and one particularly generous anonymous donation. We are encouraged and grateful for such support. I would particularly like to thank our Honorary Treasurer, Bill Milven, for all his work throughout the year, and our administrator Irene Cameron for her invaluable support.

### **Journal**

Volume 20 of the Scottish Journal of Criminal Justice Studies was published by SASO in September 2014. In line with a recommendation from the Finance Working Group, and in response to the members' survey earlier in the year, we have published the Journal online only. I am grateful to Michele Burman for her excellent work in editing the Journal and to the Editorial Board for their advice and support.

### **Conclusion**

SASO is a unique organisation which brings together such a wide range of people with interests in the criminal justice system in Scotland. I am grateful to all who have contributed to the success of SASO and look forward to another productive year for the Association.

**David Strang**

**Chair SASO Council**

**November 2014**

## **SASO Membership**

SASO has around 400 members. Those wishing to join should contact the Administrator, Irene Cameron, Association Management Solutions, PO Box 7225, Pitlochry, PH16 9AH.

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